

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN**

**EVOLVING SOLUTIONS, INC.
AND
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 City, and Evolving Solutions, Inc. located at 3989 County Road 116, Hamel, MN 55340, hereinafter referred to as Consultant for the purpose of rendering services to the City.

WHEREAS, the City has requested consulting services for furnish and install of a NetApp FAS8020 Network Storage Array, including the configuration, implementation, migration of the array, plus five (5) years of annual maintenance, (the “Services”); and

WHEREAS, Consultant has represented itself as qualified and willing to perform the services required by the City; and

WHEREAS, Consultant submitted a Proposal to provide services for the Project (the “Proposal”). A copy of the Proposal is attached hereto as Exhibit A; and

WHEREAS, the City desires to utilize Consultant’s professional services for the Project;

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

I. Services

Consultant will provide the following services related to the Project as described in Consultant’s Proposal (the “Services”). Consultant agrees that it will provide its services at the direction of the Information Technology Manager (“Manager”). In the event of a conflict between the Proposal and this Agreement, the terms and conditions of this Agreement shall be deemed controlling.

II. Fees

It is agreed between the parties that Consultant’s maximum fee for the Project and Services shall not exceed the sum of One Hundred Ninety-Seven Thousand Four Hundred Ninety-Five and 00/100th dollars (\$197,495.00) inclusive of all travel and other expenses associated with the Project, payable from Capital Equipment Fund 250 – Public Administration 015 – Fiscal Year 2015 – Capital Equipment 5580 – Project: CE250-E1510 Network Storage Replacement; and Resolution No. 16-0379R passed on May 23, 2016. All invoices for services rendered shall be submitted monthly to the attention of the

Manager. Payment of expenses is subject the City's receipt of reasonable substantiation/back-up supporting such expenses.

III. General Terms and Conditions

1. Amendments

Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the City and Consultant only upon being reduced to writing and signed by a duly authorized representative of each party.

2. 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. The Primary Consultant(s) assigned to this project will be Jim Pross or Rick Koetter (the "Primary Consultants"). The Primary Consultants shall be responsible for the delivery of professional services required by this Agreement and, except as expressly agreed in writing by the City in its sole discretion, the City is not obligated to accept the services of any other employee or agent of Consultant in substitution of the Primary Consultants. The foregoing sentence shall not preclude other employees of Consultant from providing support to the Primary Consultants in connection with Consultant's obligations hereunder.

3. Data and Confidentiality, Records and Inspection

- a. The City agrees that it will make available all pertinent information, data and records under its control for Consultant to use in the performance of this Agreement, or to assist Consultant wherever possible to obtain such records, data and information.
- b. All reports, data, information, documentation and material given to or prepared by Consultant pursuant to this Agreement will be confidential and will not be released by Consultant without prior authorization from the City.
- c. 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. Records shall be maintained by Consultant in accordance with requirements prescribed by the 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.
- e. Consultant will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- f. Consultant shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
- g. Consultant shall ensure that at any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement. Consultant will also permit the 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. Consultant Representation and Warranties

Consultant represents and warrants that:

- a. Consultant and all personnel to be provided by it hereunder has sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
- b. Consultant and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the City and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.
- c. Consultant has complied or will comply with all legal requirements applicable to it with respect to this Agreement. Consultant will observe all

applicable laws, regulations, ordinances and orders of the United States, State of Minnesota and agencies and political subdivisions thereof.

- d. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the Consultant is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Consultant contrary to the terms of any instrument or agreement.
- e. There is no litigation pending or to the best of the Consultant's knowledge threatened against the Consultant affecting its ability to carry out the terms of this Agreement or to carry out the terms and conditions of any other matter materially affecting the ability of the Consultant to perform its obligations hereunder.
- f. The Consultant will not, without the prior written consent of the City, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.

5. Agreement Period

The term of this Agreement shall commence on the Effective Date and performance shall be completed by December 31, 2016, unless terminated earlier as provided for herein.

Either party 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 from payment of any fees in respect of the services of Consultant which gave rise to such breach.

6. Independent Contractor

- a. 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. The parties do not intend to create any third party beneficiary of this Agreement. 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.

- b. 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.
- c. Consultant expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

7. Indemnity

To the extent allowed by law, 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.

8. Insurance

Consultant shall obtain and maintain for the Term of this Agreement the following

minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota.

- a. Public Liability 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, and Contractual Liability. **City of Duluth shall be named as Additional Insured by endorsement** under the Public Liability and Automobile Liability, or as an alternate, Consultant may provide Owners-Contractors Protective policy, naming himself and City of Duluth. **Upon execution of this Agreement**, Consultant shall provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included.
- b. 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, 60 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.
- c. Consultant shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.
- d. A certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
- e. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Engineer's interests and liabilities.

9. 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 411 W First Street City Hall Room 210A Duluth MN 55802 Attn: Manager
Consultant:	Evolving Solutions, Inc. 3989 County Road 116 Hamel, MN 55340 Attn: Adam Thompson

10. Civil Rights Assurances

Consultant, as part of the consideration under this Agreement, does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. Counterparts

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.

EXHIBIT A



May 4, 2016

Quote 05042016-14516

Price valid for 30 days

Elysia Hoium
City of Duluth
411 West 1st Street
Duluth, MN 55802

Project: NetApp Storage Hardware and Professional Services – Bid Number: 16-08AA

Quotation:

Part Number	Product	Qty	City of Duluth	City of Duluth
			Per Price	Ext Price
FAS8020A-001-R6	FAS8020 High Availability System	2	\$4,777.74	\$9,555.48
X6226-R6-C	Chassis,FAS8020,AC PS,-C	1	\$0.00	\$0.00
DS2246-SL096-12S-0P-R6-C	SSD SHLF,12x800GB,0P,-C	1	\$15,861.00	\$15,861.00
OS-ONTAP-CAP2-0P-C	OS Enable,Per-0.1TB,ONTAP,Perf-Stor,0P,-C	288	\$35.76	\$10,299.60
OS-ONTAP-CAP3-0P-C	OS Enable,Per-0.1TB,ONTAP,Ultra-Stor,0P,-C	96	\$246.86	\$23,698.80
DS2246-28.8TB-0P-R6-C	DSK SHLF,24x1.2TB,10K,6G,0P,-C	1	\$10,138.60	\$10,138.60
X6553-R6-C	Cable,Cntlr-Shelf/Switch,2m,LC/LC,Op,-C	4	\$48.60	\$194.40
X6559-R6-C	Cable,SAS Cntlr-Shelf/Shelf-Shelf/HA,5m,-C	8	\$66.09	\$528.70
X6562-R6-C	Cable,Ethernet,5m RJ45 CAT6,-C	4	\$0.00	\$0.00
X6585-R6-C	Cable,Ethernet,3m RJ45 CAT6,-C	1	\$0.00	\$0.00
X6566B-05-R6-C	Cable,Direct Attach CU SFP+ 10G,0.5M,-C	2	\$57.08	\$114.15
X2069-R6-C	HBA,4-Port SAS 3/6/12Gbps QSFP PCIe,-C	4	\$544.25	\$2,177.00
X5529A-R6-C	Rackmount Kit,Swift,4-Post,Square-Hole,-C	3	\$29.16	\$87.49
X6599A-R6-C	SFP+ Optical 10Gb Shortwave,FAS80X0,-C	4	\$309.06	\$1,236.25
DOC-8020-C	Documents,8020,-C	1	\$0.00	\$0.00
X800-42U-R6-C	Power Cable,In-Cabinet,C13-C14,-C	6	\$0.00	\$0.00
CS-MV-CI-FLEXPOD	FlexPod Support	1	\$25.58	\$25.58
SW-2-8020A-PREMBNDL-C	SW-2,Premium BNDL,8020A,-C	2	\$14,432.38	\$28,864.75
CS-O2-NOINSTALL-4HR-VA	SupportEdge Premium 4hr Onsite, 5 Years	1	\$37,293.59	\$37,293.59
DS4246-0748-24A-QS-R6	DSK SHLF,24x2.0TB,7.2K,6G,QS	2	\$10,045.30	\$20,090.60
OS-ONTAP-CAP1-0P-QS	OS Enable,Per-0.1TB,ONTAP,Cap-Stor,0P,QS	960	\$12.84	\$12,324.00
X5529A-R6	Rackmount Kit,Swift,4-Post,Square-Hole	2	\$29.16	\$58.33
X800-42U-R6	Power Cable,In-Cabinet,C13-C14	4	\$0.00	\$0.00
X6558-R6	Cable,SAS Cntlr-Shelf/Shelf-Shelf/HA,2m	6	\$58.31	\$349.88
X6560-R6	Cable,Ethernet,0.5m RJ45 CAT6	1	\$2.30	\$2.30
X6561-R6	Cable,Ethernet,2m RJ45 CAT6	4	\$3.50	\$14.00
CS-O2-NOINSTALL-4HR-VA	SupportEdge Premium 4hr Onsite, 5 Years	2	\$4,790.26	\$9,580.53
ESI-PS	Evolving Solutions Professional Services - Fixed Fee (including Travel and Expenses)	1	\$15,000.00	\$15,000.00
			Total	\$197,495.00



Terms: Payment Net 30 Days. Freight is prepaid and added to final invoice. Applicable taxes are not quoted here.

Order Information: Fax purchase order attention Adam Thompson at 763-516-6555 or email to adam.t@evolvingsol.com



NetApp FAS8020 Array Storage Refresh

City of Duluth

Version 1.0

Statement of Work

Prepared by:
Evolving Solutions, Inc.

April 29, 2016

Statement of Work

This Statement of Work ("SOW") sets forth the terms and conditions under which City of Duluth (*herein "Company" or "Customer"*) has engaged Evolving Solutions Professional Services ("*Evolving Solutions*") to provide the project consulting services ("*Professional Services*") described below. This engagement is valid through December 31, 2016 unless otherwise specified.

Evolving Solutions Contacts		
Contact	Account Manager	Professional Services
Name	Adam Thompson	Mike Keeler, Manager
Office/Region	Minneapolis	Minneapolis
Address	3989 County Road 116 Hamel, MN 55340	3989 County Road 116 Hamel, MN 55340
Phone	763-516-6537 Office 612-245-8956 Cell	763-516-6542 Office 612-802-5070 Cell
Fax	763-516-6555	763-516-6555
E-mail	adam.t@evolvingsol.com	mike.k@evolvingsol.com

Additional Project Contacts			
Name	email		Contact Info.
Elysia Hoium	ehoium@duluthmn.gov	City of Duluth Minnesota, MIS Manager Infrastructure and Operations	218- 730-5139
Jim Pross	jim.p@evolvingsol.com	Evolving Solutions, Sr. NetApp Consultant	612-669-4796

Project Scope

Evolving Solutions will provide City of Duluth with on-site professional services for the installation, configuration and migration to a NetApp FAS8080 array. The time frame for this Professional Services Support Contract will be from approximately May 15, 2016 through December 31, 2016.

Project Deliverables

Project preparation:

- City of Duluth to identify tier-one VMs that will be migrated via storage vMotion to FAS8020 SAS aggregate and tier-two VMs that will be migrated via storage vMotion to SATA aggregate
- City of Duluth to install NetApp VSC 6.2 Plugin install on vCenter Server

City of Duluth to provide the following at their Data Center

- Rack Space, Network, and Power drops for Node1/2:
- 15U of continuous rack space
- 4-1GbE Drops
 - Qty (2) 1GbE (1 per FAS8020 controller for Management)
 - Qty (2) 1GbE (1 per FAS8020 controller for CIFS and/or Replication)
- 4-16Gb/8Gb FC Drops
 - Qty (4) 16Gb/8Gb FC (2 per FAS8020 controller)
- 10-C14 PDU Outlets

Project delivery steps:

- Rack FAS8020 and disk shelves (15U)
- Install cluster DataONTAP 8.3.2 and latest firmware
- Create Flash Storage pool
- Configure two Aggregates
- Configure Physical Mgmt and Ethernet Network
 - Configure Mgmt ports using 1GbE e0M wrench ports
 - Configure 1GbE on ports e0e/e0e with appropriate vlans
 - CIFS and or SnapMirror
- Configure SAN Fabric
 - Connect 0c to Fabric A and 0d to Fabric B
- Configure Storage Virtual Machine and its Logical Interfaces (LIFs)
 - Configure admin LIF
 - Create (4) FC LIFs (two per node i.e. one on each fabric)
 - Provide WWPNs to City of Duluth for zoning
 - Configure SnapMirror LIFs
 - Create Volumes/LUNs (datastores)
 - Setup SnapShot polices
 - Setup QoS polices
- Configure AutoSupport (phone home)
- Configure SnapMirror peer to peer relationship (with another NetApp cDOT system)
- Configure NetApp vCenter VSC Plugin
 - Create NetApp VSC backup job to backup (snapshot) VM datastore
 - crash consistent snapshot
- Test HA with Storage Failover of node1/node2
- Install Monitoring Appliances:
 - Install/Configure OnCommand Unified Manager 6.4 Appliance

- Install Performance Manager 2.1 Appliance
- Knowledge Transfer
 - Cluster DataONTAP (cDOT) provisioning and operations
 - vCenter VSC Plugin
 - OnCommand Unified Manager and Performance Manager
- Install NetApp 7MTT migration tool on Windows 7 Enterprise VM
- Evolving Solutions to provide knowledge transfer for one ESXi host boot LUN transition from FAS3140 to FAS8020. City of Duluth to migrate remaining ESXi boot LUNs.
- City of Duluth to create new datastores on FAS8020
- City of Duluth to Migrate VMs on FAS3140 to FAS8020 via VMware Storage VMotion
- Decommission FAS3140

General:

- City of Duluth to provide 15U of continuous rack space
- Evolving Solutions will rack and stack FAS8020 and disk shelves
- Evolving Solutions will setup cluster and configure FAS8020 per City of Duluth management IPs, hostnames, etc

Verification of the customer environment:

- Confirm that firmware version are at the proper levels
- Confirm that the NetApp is operating as expected

Deliverables/project wrap-up:

- Customer agrees the project is complete

Assumptions/Customer responsibilities:

- Customer to provide (2) 1GbE network drops (1 per node) for mgmt
- Customer to provide (2) 1GbE network drops (1 per node) for CIFS and/or SnapMirror
- Customer to provide (4) 16/8Gb Fiber drops (2 per node)
- Customer to provide IPs and hostname information

Fees and Invoicing

This SOW is a Fixed Fee Project. This means that City of Duluth will be invoiced a fixed price for the project based on Project Scope and Deliverables herein regardless of the amount of time spent on the project.

Bill Rate: \$15,000. (includes travel and expenses)

Invoicing: Evolving Solutions will invoice City of Duluth at project completion

Location

The Services described herein shall be performed primarily at City of Duluth Minnesota data center, 411 West First Street, Duluth, MN 55802.

Obligation

Customer shall provide Evolving Solutions access to their staff at various times in the engagement. Evolving Solutions will make every reasonable effort to limit demands on staff members, but some may have critical knowledge of the operations and the business itself. This knowledge must be made available to Evolving Solutions in a timely fashion as it is invaluable to the success of the engagement. In support of this, the Customer shall:

- Assign a single point of contact for issue resolution, activity scheduling, interview scheduling, and information collection and dissemination
- Provide at least one (1) technical contact with system administration responsibilities and appropriate levels of access to systems (as part of this project) and information necessary to perform this engagement
- Make any system maintenance window available for Evolving Solutions as needed to prepare the environment
- Respond to Evolving Solutions requests that Customer staff work on issues/tasks not directly stated herein, but have a direct impact on the successful completion of the project
- Review and comment on all deliverables provided by Evolving Solutions
- Provide network connectivity and access, and assume all responsibility for network performance and network configuration issues
- If a problem is encountered which must be turned over to vendor support for resolution, the customer will be responsible for working with vendor support to resolve the problem. The Consultant will not spend project time to manage vendor support issues.

Mutual Responsibilities

In support of this effort, both Evolving Solutions and Customer will:

- Conduct review meetings at a mutually agreed upon time and location to discuss overall satisfaction.
- Coordinate any change(s) to this Statement of Work (whether cost impacting or not) with project contact/sponsor, and process them using a Project Change Request Form supplied in this document.

Change In Scope

Any deviation or change in the scope of the Consulting Services must be approved by Customer, and Evolving Solutions management (or an authorized designee thereof). When a change is desired, the requestor notifies Evolving Solutions Professional Services who facilitates the following:

- Prepares a preliminary Project Change Request Form to identify the nature of the requested change.
- Acknowledges receipt of the Change Request.
- Reports the Change Request status in the Progress Reports.
- This report shall result in a final Project Change Request containing estimated cost, schedule, technical feasibility, resource requirements and shall answer questions such as:
 - Consulting changes without adjusting current cost or delivery schedule.
 - Consulting changes with impact to Client cost or delivery schedule.
 - Recommend as a follow-on project.

The Evolving Solutions Project Manager reviews the Project Change Request with Customer and the document shall be signed by both parties. If "accepted", Consulting Services are revised to include the agreed change(s) and the invoicing process is appropriately modified.

Terms and Conditions

1. Price, payment, taxes.
Customer agrees to pay the fees as set forth in the SOW. Termination of the SOW for any reason shall not affect the customer's continuing obligation to pay all fees and costs invoiced by Evolving Solutions under terms of the agreement prior to the termination. All fees are exclusive of applicable taxes or other charges imposed by law. All taxes, if applicable, will be added to the fees and itemized or invoiced separately.
2. Limitation of liability.
 - (a) Neither party shall be liable to the other for any indirect, consequential, exemplary, treble, special, incidental or punitive damages, including without limitation loss of use or lost business, revenue, profits, or goodwill, arising in connection with this SOW, equipment, related products, documentation and/or the intended use thereof, under any theory of tort, contract, indemnity, warranty or strict liability, even if the party has been advised, knew or should have known of the possibility of such damages.
 - (b) Without limitation of the provisions of section (a) above, the total liability of either party in connection with this agreement shall be limited to the lesser of the total amounts paid by the customer to Evolving Solutions for the professional services forming the basis of the claim or cause of action for the six (6) months immediately preceding the date on which such claim or cause of action arose. Evolving Solutions shall not be liable for damages that could have been avoided by customer's use of reasonable diligence. The foregoing limitation applies to all causes of actions and claims, including, without limitation, breach of contract, breach of warranty, negligence, indemnity, strict liability, misrepresentation and other torts. The customer acknowledges and accepts the reasonableness of the foregoing disclaimers and limitations of liability.
3. Responsibilities, systems administration, and customer data.
Customer will be solely responsible for the management of its systems administration, data back-up, data recovery, and disaster recovery measures. Evolving Solutions will not be responsible or held liable for customer's internal processes and procedures to insure the management, administration, protection, loss, confidentiality, or security of customer data or information.
4. Independent contractor.
Evolving Solutions shall conduct its business as an independent agent with respect to the customer. Evolving Solutions agrees that it will, at all times, represent to third persons and to the public generally and to all governmental bodies, including, but not limited to, federal, state or local authorities that the business conducted by Evolving Solutions with respect to customer is that of an independent agent and that such is the sole relationship between the parties. It is expressly understood that Evolving Solutions is not in any way constituted the legal representative of customer for any purpose whatsoever with respect to the SOW. Customer shall deduct no income tax or other withholdings whatsoever from payments due Evolving Solutions.
5. Non-solicitation.
Customer agrees that during the term of this SOW and for a period of two (2) years after the termination or expiration of this SOW, the customer shall not (without the prior written consent of Evolving Solutions), on its own behalf or on behalf of any other person or entity, directly or indirectly employ or retain, or solicit the employment or retention of, any partner, principal, director, employee or independent contractor of Evolving Solutions or any subcontractor of Evolving Solutions that

participates in the performance of the services herein. The customer and Evolving Solutions further agree that, if customer breaches this covenant of non-solicitation, damages will be impossible to ascertain and in addition to any other remedies which Evolving Solutions may have at its disposal, the customer will pay to Evolving Solutions agreed and liquidated damages (and not as a penalty), a sum equal to one half (½) of the annualized direct and indirect compensation at the time of the breach for the partner, principal, director, employee or independent contractor

6. Intellectual property.

Customer recognizes and acknowledges that any and all intellectual property, as defined in this section 6, authored, prepared, created, made, delivered, conceived, altered, modified or reduced to practice by Evolving Solutions in the course of providing the services (collectively, "work product") is the sole and exclusive property of Evolving Solutions. Customer hereby irrevocably assigns all right, title and interest in and to such work product to Evolving Solutions.

7. Termination.

- (a) Evolving Solutions or customer shall have the right to terminate this SOW as follows:
 - i. For cause, if (a) either party fails to perform any material term or condition herein, including remitting payment when due, and does not remedy the failure within thirty (30) days after the receipt of written notice of such default given by the non-defaulting party, or;
 - ii. A party becomes insolvent, files, or has filed against it a petition under applicable bankruptcy or insolvency laws which is not dismissed within ninety (90) day; proposes any dissolution, composition or financial reorganization with creditors; makes an assignment for the benefit of creditors; or if a receiver, trustee, conservator, liquidator or similar agent is appointed or takes possession with respect to any property or business of the defaulting party. Such a termination shall not relieve either party from its obligations to pay the other any sums accrued hereunder prior to such termination.
- (b) Evolving Solutions shall be entitled to the following rights upon termination of the SOW:
 - i. Recovery of past due amounts and any payments and other amounts owing

8. Indemnification.

Customer expressly agrees to defend, indemnify and hold harmless Evolving Solutions, its affiliates, employees, officers, directors and contractors from any claims, losses, liabilities, expenses, costs, suits or damages, including reasonable legal fees and claims of infringement (hereafter the "claims"), arising from or in connection with:

- (a) The customer's breach of this SOW;
- (b) Any claims of intellectual property infringement related to the services and arising by or through the customer;
- (c) Any claims of injury to persons, properties or the environment based on either strict liability in tort, negligence, breach of warranties or violations of any regulatory law or requirement, or;
- (d) Any failure of the customer to comply fully with all applicable laws.



SOW Agreement

This SOW is a complete and exclusive agreement between Evolving Solutions and City of Duluth with regard to their subject matter and all contents therein. In Witness whereof, the parties have caused the SOW to be signed on the respective dates indicated below. The parties hereby acknowledge that they have read and do understand this SOW and agree to all terms and conditions stated herein.

Statement of Work Acceptance Signatures			
Evolving Solutions Inc.		City of Duluth	
Signature:		Signature:	
Name:		Name:	
Title:		Title:	
Date:		Date:	



Evolving Solutions Change Request Form	
Nature of change request:	Impact to Project Schedule:
Date requested:	
Pricing Information (To be completed by Evolving Solutions)	
<i>Estimated costs for change:</i>	
Fixed Fee	Time & Materials
Customer Information	
Customer Name/Address:	Billing Contact Name/Phone/E-Mail:
Signatures	
Form Completed By: (signature) Evolving Solutions	Accepted By: (signature)
Name: (print)	Name: (print)
Title:	Title:
Date:	Date: