PUBLIC WORKS & UTILITIES COMMITTEE

13-0069R

RESOLUTION AUTHORIZING A THREE-YEAR AGREEMENT WITH ENERGY MANAGEMENT SOLUTIONS, INC., FOR PROFESSIONAL SERVICES RELATED TO A COMMERCIAL AND INDUSTRIAL CONSERVATION IMPROVEMENT PROGRAM FOR DULUTH PUBLIC WORKS & UTILITIES, FOR AN ANNUAL AMOUNT NOT TO EXCEED $35,000 IN EACH OF YEARS 2013, 2014, AND 2015, AND A TOTAL CONTRACT AMOUNT NOT TO EXCEED $105,000.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into a three-year agreement with Energy Management Solutions, Inc., substantially the same as that on file in the office of the city clerk as Public Document No. _____, for professional services related to a commercial and industrial conservation improvement program for Duluth public works & utilities, and achieving a state-mandated 1.5% energy savings goal, in accordance with its proposal dated January 8, 2013, for an annual amount not to exceed $35,000 in each of years 2013, 2014, and 2015, and a total contract amount not to exceed $105,000; said annual amount of $35,000 for year 2013 payable from Gas Fund 520, Dept./Agency 500 (Public Works and Utilities), Org. 1940-2430 (Customer Services-Information and Conservation), Object 5487 (Conservation Improvement).

Approved:

Department Director

Purchasing Agent

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Attorney

Approved:

Auditor

PWU/PRCH ES:DS:le 01/31/2013

STATEMENT OF PURPOSE: This resolution authorizes a professional services agreement with Energy Management Solutions, Inc. (EMS), for an annual amount not to exceed $35,000 for each of years 2013, 2014, and 2015, and a total contract amount not to exceed $105,000. The project is adequately funded throughout the three-year contract period.

The city desires to have EMS develop the capacity of the commercial and industrial (C&I) conservation improvement program (CIP) to exceed the 20 annual assessments city staff currently complete. The city's selection of the same company that conducts Minnesota Power's electrical portion of C&I energy audits, benefits the customer, who will have assessments of both natural gas and electrical use and efficiency and conservation measures for both energy resources qualified for each utility's conservation improvement program.

EMS provides energy management services for a variety of gas utilities and large industrial and commercial organizations. EMS can use this experience to help the Duluth public works and utilities enhance existing programs and develop new ones to meet the state mandate to reduce 1.5% of annual natural gas sales through conservation programs.

Energy Management Solutions, Inc., located in Chanhassen, Minnesota, has worked with Comfort Systems customers since 1991.

Requisition No. 13-0079

AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
ENERGY MANAGEMENT SOLUTIONS, INC.
AND
CITY OF DULUTH

THIS AGREEMENT, effective as of the date of attestation by the City Clerk, by and between the CITY OF DULUTH, a municipal corporation, hereinafter referred to as "City," and Energy Management Solutions, Inc., 7935 Stone Creek Drive, Suite 140, Chanhassen, Minnesota 55317, hereinafter referred to as "Consultant," for the purpose of rendering services to the City.

WHEREAS, the City desires to use Consultant's professional services to increase the capacity of Duluth Public Works and Utilities' commercial and industrial conservation improvement program for energy audits to 50 commercial and industrial customers annually, report survey findings, and recommend efficiency and conservation measures.

WHEREAS, Consultant has represented that it is qualified and willing to perform services set forth in its proposal;

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

I. Services to be Performed.

Consultant will provide the services identified in its Proposal dated January 8, 2013, attached hereto as Exhibit A and the Work Scope for Commercial and Industrial Conservation Improvement Program Services ("Work Scope") attached hereto as Exhibit B. In the event of any conflict between the terms of the Proposal, the Work Scope and this Agreement, the terms and conditions of this Agreement shall be deemed to be controlling. In the event of a conflict between the Proposal and Work Scope, the Work Scope shall be deemed to be controlling.

II. Professional Fees and Payment.

It is agreed between the parties that Consultant's maximum annual fee for the term of this Agreement shall not exceed $35,000 for a total contract amount not to exceed $105,000 (One hundred thousand and no/100 dollars) inclusive of all travel and other expenses associated with the Project, payable from the Gas Fund 520, Consultant 500, Organization 1940-2430, Object 5487. Requisition No. 13-0079. All bills for services rendered shall be submitted monthly to the Gas and Energy Coordinator of Public Works and Utilities Department.

III. Terms and Conditions.

1. Term and Termination.

a. Consultant shall commence performance of this Agreement upon the execution thereof and performance shall be completed by December 31, 2015, unless otherwise agreed to by both parties in writing.

b. This Agreement can be canceled by either party by giving 90 days written notice to the non-canceling party. 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.

2. Consultant Representation and Warranties. Consultant represents and warrants that:

a. Consultant and all personnel to be provided by it hereunder have sufficient training and experience to perform the duties set forth herein and in its Proposal 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. 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.

d. 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.

e. 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.

f. 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.

g. 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.

3. Insurance and Indemnification.

a. Consultant shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota.

(1) Workers' compensation insurance in accordance with the laws of the State of Minnesota.

(2) Public Liability and Automobile Liability Insurance with limits not less than **$1,500,000** Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.

(3) **City of Duluth shall be named as Additional Insured** under the Public Liability and Automobile Liability, or as an alternate, Contractor may provide Owners-Contractors Protective policy, naming himself and City of Duluth. Consultant shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance. Consultant to provide Certificate of Insurance evidencing such coverage with 30 days notice of cancellation, non-renewal or material change provisions included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor's interests and liabilities. *An umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the City of Duluth as an additional insured*

(4) If a certificate of insurance is provided, the form of the certificate

shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against the City.

(5) **The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms - 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.**

b. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Consultant, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Consultant, its employees, agents and representatives in the negligent performance of work covered by this Agreement.

c. Certificates showing that Consultant is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.

d. The City shall be named as an additional insured on each liability policy other than the professional liability and the workers' compensation policies of the Consultant.

e. The certificates shall provide that the policies shall not be changed or canceled during the life of this Agreement without at least 30 days advanced notice being given to the City.

f. Consultant agrees to defend, save harmless, and indemnify the City of Duluth, its agents, and employees from any loss, cost, or damage by reason of personal injury or property damage of whatsoever nature or kind arising out of, or as a result of, the performance of the work by the Consultant, its employees, agents, or subcontractors.

4. Notices. Notice to the City or Service provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the parties at the following addresses or to such other respective persons or addresses as the parties.

City of Duluth EMS Management Solutions,

Public Works and Utilities	Inc.
Department/Comfort Systems	7935 Stone Creek Dr.
520 Garfield Ave	Suite 140
Duluth, MN 55802	Chanhassen, MN 55317
Attn: Gas and Energy Coordinator	Attn: _____

5. Qualifications. Consultant represents that it is qualified and willing to perform the services set forth herein.

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

7. 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.

8. Data and Confidentiality.

   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. All notes, reports, records and other data prepared under this Agreement shall become the property of the City upon completion or termination of the services of Consultant.

9. 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. 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 Public Employees Retirement Association. 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. Contractor expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

10. 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.

11. 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.

12. 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.

13. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits are 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.

14. Counterparts

This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

CITY OF DULUTH

By

_____

Mayor

Attest:

_____

City Clerk

Date:_____

Approved as to form:

_____

City Attorney

_____

Department Director

_____

Purchasing Agent

EMS ENERGY MANAGEMENT SOLUTIONS, INC.

By

_____

Representative

Its_____

Title of Representative

Date:_____

EXHIBIT A

Proposal

EMS
Energy Management Solutions, Inc

Using **Our** Energy to Save **Yours**

January 8, 2013

Eric Schlacks
Gas and Energy Coordinator
Comfort Systems – City of Duluth
414 West 1st Street
Duluth, MN 55802

Subject: Proposal to Provide Conservation Improvement Program Services for Duluth Public Works and Utilities

Dear Mr. Schlacks,

First and foremost, thank you for giving Energy Management Solutions, Inc. (EMS) the opportunity to work with Comfort Systems in developing and administering a Conservation Improvement Program (CIP) for commercial and industrial customers.

Energy Management Solutions, Inc. is a provider of energy management services for a variety of customers – including gas and electric utilities, large industrial and commercial organizations, government entities and multi-national corporations. EMS provides services for supply and demand solutions, renewable energy project development, utility conservation program (CIP) management and price risk management. Collectively, EMS staff has completed over 12,000 energy audits for commercial, industrial and government facilities. As a result of this experience, EMS has streamlined a solutions-oriented approach to identifying energy-savings projects. EMS was established in 1998 and works throughout the United States. More specifically, EMS has been working in the Duluth area for over 20 years, conducting facility assessments and identifying efficiency projects for many commercial, industrial, agricultural and government facilities.

- **Familiarity with Customers**

EMS has worked with Comfort Systems customers in the Duluth area since 1991. For more than two decades, our team has been providing energy conservation services for commercial, industrial, and multi-family customers in the Comfort Systems service area. EMS has a local office with three full-time employees and an additional two to five employees who interact on a regular basis with Comfort Systems customers. Our team of engineers and energy analysts performs detailed energy audits, recommending natural gas and electric energy conservation and efficiency measures, delivering energy conservation programs, working with customers on rebates, and interacting with contractors and vendors on the implementation of identified measures. Most recently, EMS was selected from among a half dozen companies to complete 86 energy audits for the City of Duluth's government facilities, providing them with direction for energy efficiency and capital improvement planning for long-term energy and cost savings.

7935 Stone Creek Drive, Suite 140
Chanhassen, MN 55317
Phone: 952.767.7450 Fax: 952.767.7460 Email: contact@emsenergy.com

The EMS staff has extensive experience with the local utility energy conservation programs. Currently, EMS is hired by Minnesota Power to conduct energy audits for commercial and industrial customers throughout its territory. EMS has had a hand in developing and implementing Minnesota Power's CIP program, while providing energy efficiency expertise to their commercial and industrial customers and facilitating rebates for energy efficiency and conservation projects. As a contractor to Minnesota Power – providing ongoing commercial, industrial, and government facility audits and conservation services – we have developed close connections and familiarity with the specifics of the geographic location, the community, trade allies, and the local utility programs. The proposed services for Comfort Systems (e.g., customer calls, site visits, and audits) can therefore be provided in a cost-effective manner by building on existing relationships and taking advantage of these efficiencies.

In addition to Minnesota Power, EMS currently works with a number of other utilities in northern Minnesota, including Minnesota Energy Resources (MERC), Virginia Public Utilities, and Superior Water, Light and Power, to help identify and implement energy-savings projects for their respective customers. Grand Rapids, Ely, Mountain Iron, Virginia, Biwabik, Brainerd, Glencoe, and East Grand Forks are just a few of the northern Minnesota municipalities we presently serve by delivering ongoing energy management services.

- **Proposed Services**

EMS believes in providing a comprehensive approach to developing, administering, and managing different elements of a Conservation Improvement Program (CIP) portfolio. In an effort to expand and adjust Comfort Systems' conservation programs as customer needs change and as the market evolves, EMS will provide a thorough evaluation of existing programs and help develop and administer new initiatives. EMS will help Comfort Systems evaluate all opportunities – through the development of new construction rebate programs, expansion and retrofit design reviews, new technology incentive promotions, and other program offerings – to maximize the energy savings that can be claimed toward the overall 1.5% energy savings goal.

EMS proposes to help Comfort Systems achieve the 1.5% energy savings required by the Minnesota Division of Energy Resources by providing the following services:

1. Provide service for Comfort Systems' current CIP program including: developing marketing materials, providing customer and staff training, processing rebate incentives, coordinating with the DER, and other program assistance requested by Comfort Systems.

2. Work closely with Comfort Systems representatives and customers directly: being available by telephone, email correspondence, and site visitation for all commercial, industrial, and multi-family customers regarding questions on energy conservation and efficiency.

3. Perform on-site energy assessments for Comfort Systems' commercial and industrial customers, identifying and recommending energy efficiency and conservation measures.

4. As directed by Comfort Systems, provide a survey for natural gas and electric energy use and incentives.

5. Process custom and prescriptive rebate applications providing Comfort Systems' commercial and industrial customers with incentives for implementing energy efficiency measures.

6. Assist with the development, administration, and implementation of conservation program segments such as new construction design and rebate assistance.

7. Work with and develop relationships with local contractors and distributors (mechanical, HVAC, architects, engineers, etc.) to help further promote the commercial/industrial portion of Comfort Systems' CIP program.

8. Maintain and regularly share a list in an Excel spreadsheet format for tracking savings, incentives, contacts and other information deemed appropriate by Comfort Systems.

9. Other duties as assigned and designated by Comfort Systems. EMS understands there may be instances from time to time where Comfort Systems may want to adjust and/or modify programs. EMS is flexible and willing to adjust as needed and agreed by both parties.

EMS has qualified and experienced staff members with engineering and professional business backgrounds to perform all the above duties, as well as any customized program requirements that best suit the needs of Comfort Systems.

EMS utilizes an assortment of standardized management and operational reports. We employ a variety of software tools for this purpose, including Tenrox, a sophisticated online project management tool, for resource management, resource scheduling, project planning, time and expense tracking, and project billing and cost reporting. EMS will customize reports to suit the needs of Comfort Systems.

- **Proposed Budget**

EMS proposes the following budget for January 1 through December 31, 2015:

Staff	Hourly Rate	Hours	Total
Principals	$95.00	5	$475.00
Senior	$75.00	200	$15,000.00
Junior	$65.00	228	$14,820.00
Admin	$40.00	50	$4,000.00
		Subtotal	$32,295.00
		Materials	$300.00
		Expenses	$2,400.00
		Total Budget	$34,995.00

EMS is open to making any changes or revisions you would like to include in this proposal. If you have any questions, please do not hesitate to contact me. I will follow up with you in the next week to discuss the proposal and address any questions you may have.

We look forward to helping Comfort Systems achieve its CIP goals and save energy for its commercial and industrial customers. Thank you for your consideration.

Sincerely,

Matt Haley, CEO
Energy Management Solutions, Inc.
612-598-8743
mh@emsenergy.com

EXHIBIT B

Work Scope for Commercial and Industrial Conservation Improvement Program Services

Work Scope for Commercial and Industrial Conservation Improvement Program Services

Duluth Public Works and Utilities conservation programs have evolved as customer needs and State regulations have grown. In 2007 the Minnesota legislature passed the "Next Generation Act" setting a 1.5 percent energy efficiency and conservation savings goal for utilities throughout Minnesota. The Minnesota Division of Energy Resources (DER) is responsible to monitor and evaluate each utility's Conservation Improvement Programs (CIP) to ensure compliance.

Energy Management Solutions, Inc. (EMS) provides energy management services to a variety of natural gas and electric utilities, industrial and commercial organizations, schools, and government entities. EMS is currently hired by Minnesota Power to conduct energy audits for commercial and industrial customers in its service territory. This relationship has given EMS familiarity with the operations of many customers in Duluth. EMS was selected by the City of Duluth, Duluth Public Works and Utilities, and Minnesota Power, through a competitive bid process, to conduct 86 audits of facilities for the City of Duluth.

Duluth Public Works and Utilities wants EMS to provide services to support and enhance its Commercial and Industrial Conservation Programs to maximize the energy savings required by the "Next Generation Act."

- Perform 50 on-site energy assessments for commercial and industrial customers and identify and recommend energy efficiency and conservation measures. Analyze and report energy savings potential and financial benefits (simple pay back & life cycle analysis) as directed by the Manager of Customer Service or the Gas and Energy Coordinator.
- Provide services for current CIP programs as directed by the Manager of Customer Service or the Gas and Energy Coordinator on an hourly basis not to exceed $35,000 each year in 2013, 2014, and 2015.
- Provide service for current Commercial and Industrial CIP program including: developing marketing materials, providing customer and staff training, processing rebate incentives, coordinating with the Division of Energy Resources, and other program assistance as directed by the Manager of Customer Service or the Gas and Energy Coordinator.
- Work closely with Public Works and Utilities representatives and customers directly: being available by telephone, through e-mail correspondence and site visitation for commercial, industrial, and multi-family residential customers regarding questions on

energy conservation and efficiency as directed by the Manager of Customer Service or the Gas and Energy Coordinator.

- Process custom and prescriptive rebate applications providing documentation for Public Works and Utilities to process and approve incentives for commercial and industrial customers for implementing energy efficiency measures as directed by the Manager of Customer Service or the Gas and Energy Coordinator.
- Assist with the development, administration and implementation of conservation program segments such as new construction design and rebates or loans as directed by the Manager of Customer Service or the Gas and Energy Coordinator.
- Work with and develop relationships with local contractors, distributors, and trade allies (mechanical, HVAC, architects, engineers, etc.) to promote the commercial and industrial portion of Public Works and Utilities CIP program.
- Maintain a list (Excel spreadsheet format) for tracking savings, incentives, contacts and other information as directed by the Manager of Customer Service or the Gas and Energy Coordinator.
- Perform other CIP work as assigned or as directed by the Manager of Customer Service or the Gas and Energy Coordinator.

EMS has qualified and experienced staff members with engineering and professional business backgrounds to perform the work listed above. EMS will be given a budget amount not to be exceeded in carrying out the work assigned to them. EMS will bill Public Works and Utilities for time spent performing the above services at specified hourly rates for its staff. EMS will report monthly on the budget and notify the Gas and Energy Coordinator in advance if it determines that funding for work assigned to EMS is not adequate to complete assigned work.