

**AGREEMENT FOR CONSTRUCTION  
OF HOT WATER EXTENSION  
SUPPORTING MEDICAL ENTITY EAST**

**REGIONAL EXCHANGE DISTRICT PROJECT**

THIS AGREEMENT, effective as of the date of attestation thereto by the City Clerk, entered into by and between the CITY OF DULUTH, a Minnesota municipal corporation (the “City”), and ST. LUKE’S HOSPITAL OF DULUTH, a Minnesota nonprofit corporation (“St. Luke’s”).

WHEREAS, the City, in cooperation with St. Luke’s, secured authorization to implement the Regional Exchange District development, hereinafter defined and referred to as the “RED”, in the portion of the City generally referred to as the City’s Medical District pursuant to the hereinafter-defined “Act”; and

WHEREAS, the RED provides generally for district energy connections, capacity enhancement, and district energy utility improvements reasonably necessary and advantageous to serve developments within the Regional Exchange District; and

WHEREAS, construction of a hot water service extension on St. Luke’s-owned property is necessary to enhance District Energy Systems service to St. Luke’s Hospital, as depicted on the attached Exhibit B; and

WHEREAS, pursuant to the Act, various funds have been appropriated by the State to the City to defray portions of the cost of various elements of the RED, which funds can be used by City to reimburse St. Luke’s for elements of the RED as provided for in the Act; and

WHEREAS, the City has determined that it is in the best interests of the City to contract with St. Luke’s to construct the hereinafter-defined “Project” under the terms and conditions of this Agreement; and

WHEREAS, St. Luke’s is willing to undertake such construction work and to accept reimbursement, all in accordance with the terms and conditions of this Agreement.

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

ARTICLE I Definitions

1.1 The words and phrases set forth in this Article I below shall have the meanings hereinafter ascribed to them:

1.1.1 Act: shall mean Minnesota Laws 2019, 1st Special Session Chapter 6, Article 10, as amended by Section 1 of Laws of Minnesota 2021, 1st Special Session Chapter 9. In addition, all words and phrases defined in the Act which are used in this Agreement shall have the meanings ascribed to them in the Act unless otherwise specifically stated herein.

1.1.2 Chief Financial Officer: shall mean the City's Chief Financial Officer or such person or persons designated by them to perform various functions of the Chief Financial Officer as hereinafter set forth.

1.1.3 City Construction Representatives: shall mean Ever-Green Energy Inc. ("Evergreen") and any person authorized by the City in writing. The names and e-mail addresses of the persons as of the date of this Agreement shall be those set forth on Exhibit A attached hereto and made a part hereof; provided that the City may, from time to time, modify the names or e-mail addresses of the persons designated by giving notice thereof to St. Luke's as provided for in Section 12.8 of this Agreement below.

1.1.4 City Indemnified Parties: shall mean the City and its officers, agents, servants, employees and any person who controls City within the meaning of Securities Act of 1933.

1.1.5 Contractor: shall mean the construction contractor or contractors contracted for by St. Luke's to construct any element or portion of the Project. It is anticipated that the Contractor will be A.W. Kuettel & Sons, Inc.

1.1.6 DEED: shall mean the State Department of Employment and Economic Development.

1.1.7 Grant Agreement: shall mean that certain Master Grant Agreement Construction Grant for the Duluth Regional Exchange District effective as of June 24, 2019 and such other agreements between the City and the State of Minnesota, either directly or through one or more of its Departments establishing the terms, conditions and obligations required of the City by the State in order for the City to have access to and to be able to expend the State funding provided for in the Act, and as said Agreement may be amended.

1.1.8 Plans: shall mean all plans and specifications for any elements of the Project at any stage of preparation and specifically including construction plans and specifications and any modifications thereto, all approved as provided for in Article III below.

1.1.9 Project: shall mean the design and construction of a hot water service extension on the Property, as depicted on the attached Exhibit B, and as described in the Plans, subject to the State Funds for the Project authorized therefore pursuant to the Act.

1.1.10 Property: shall mean the property owned by St. Luke's and located at 1012 E. Second St., Duluth, MN 55805.

1.1.11 Regional Exchange District Development or RED: shall mean the Regional Exchange District development as described in the Act.

1.1.12 Reimbursable Costs: shall mean all costs of the design, construction, and related costs of the Project which are eligible for reimbursement from State Funds in accordance with the requirements of the Act, the Grant Agreement and this Agreement.

1.1.13 State: shall mean the State of Minnesota.

1.1.14 State Funds: shall mean all funds to be provided by State for the RED pursuant to the Act.

1.1.15 St. Luke's Indemnified Parties: shall mean St. Luke's and its officers, agents, servants, and employees.

## ARTICLE II Grant Agreement: Property

### 2.1 Generally

In order for the City to access and expend funds to be provided for the RED pursuant to the Act, the City has entered into the Grant Agreement which places certain requirements, conditions and limitations on the City and its ability to access said funds for the RED.

### 2.2 St. Luke's Bound

St. Luke's agrees that to the extent that the Grant Agreement imposes any requirements or obligations on the design or construction of the Project or upon the availability of State Funds to reimburse either the City or St. Luke's for any portion of the costs of the Project, St. Luke's shall be bound by the terms, conditions and limitations contained in the Grant Agreement.

### 2.3 St. Luke's Cooperation

St. Luke's hereby commits that it will cooperate fully with City in assisting the City to meet all of its obligations under the Grant Agreement to the extent that it reasonably can without incurring any actual, out-of-pocket expenses that do not constitute Reimbursable Costs, including but not limited to providing all information and documentation required by the State under the Grant Agreement in order to demonstrate compliance with the requirements of the Act and access to the State Funds.

### 2.4 Easement

Prior to issuance of a Certificate of Completion, St. Luke's shall: (i) provide a survey in a form reasonably acceptable to City; (ii) provide record drawings of the completed Project in a form reasonably acceptable to City, and (iii) enter into an Easement Agreement in a form reasonably acceptable to City.

## ARTICLE III            Plans

### 3.1     In General

The design and specifications for the Project and covered by this Agreement have been approved by and are on file with Evergreen as of March 15, 2023.

### 3.2     Changes to the Plans

Any changes made to Plans proposed by any party other than the City from the Plans referenced in Section 3.1 above shall be deemed to be material or substantial and shall be submitted by e-mail to all of the persons defined herein as City Construction Representatives at the e-mail addresses provided for herein for approval before any construction of the Project is commenced in conformance with the proposed changes. Unless the City Construction Representatives shall so approve any such change, no construction of the Project not conforming to the approved Plans shall be constructed; provided, however, that if no City Construction Representative shall have responded to such request for a change to the Plans within 24 hours of the date and time of the e-mail requesting such change as set forth in the date and time stamp contained in said e-mail, said request shall be deemed to have been approved by the City.

## ARTICLE IV            Bid Documents & Bidding

### 4.1     In General

Pursuant to Section 4, Subdivision 4 of the Act, the construction contract for construction of the Project is not required to be competitively bid within the meaning of Minnesota Statutes Section 471.345 or Chapter 41 of the Duluth City Code, 1959, as amended. Nevertheless, it is in the best interests of both the City and St. Luke's to secure competitively priced bids from contractors who are competent to construct the Project to ensure that both the public and St. Luke's receive a well-constructed project at the best available price. In addition, Section 5 (c) of the Act requires that the Project must proceed and comply with state and local contracting requirements that would otherwise be applicable to the City had the City let the contract for construction of the Project.

### 4.2     Bid Process and Approval of Contractor

Evergreen prepared a request for bids and bid specifications which included a proposed contract for construction of the Project and which conformed to City's "Procurement and Contracting Requirements Checklist." Upon receipt of bids for the construction of the Project, Evergreen recommended St. Luke's select A.W. Kuettel & Sons, Inc. as the Contractor to whom the contract for construction of the Project should be awarded.

### 4.3     Permits, Licenses, Etc.

St. Luke's and its contractors shall be responsible for obtaining all permits, plat approvals, licenses and other approvals required pursuant to applicable local, state and federal laws, ordinances and regulations required for the construction of the Project in accordance with the Plans, including those required to be obtained from the City, and for paying the cost thereof; provided that the

amounts incurred in connection therewith shall constitute Reimbursable Costs and, therefore, be subject to reimbursement pursuant to this Agreement.

#### 4.4 Warranty Requirement

St. Luke's agrees to cause the Contractor to warranty the Project for a period of one (1) year after acceptance by the City as provided for in Article VI below. Such warranty shall include, but not be limited to, repairs or corrective action due to improper construction or compaction.

#### 4.5 Timing & Community Impacts

It is acknowledged by the parties that the Project is a part of the RED and, as such, it is important that St. Luke's should have substantial latitude in the timing of the commencement and completion of the Project. However, it is also understood that the construction of the Project will have material impacts on City's Medical District and on the entire City as a whole and therefore the timing of the various elements of the construction of the Project is also critical to the City. Therefore, St. Luke's agrees that all contracts for construction of all elements of the construction of the Project will include definite and enforceable dates and/or time periods for commencement and completion of construction and that said commencement and completion dates and/or time periods shall be subject to the reasonable approval of City.

### ARTICLE V Construction

#### 5.1 Contract with Contractor

St. Luke's shall enter into a construction contract for the construction of the Project with the approved Contractor. Said contract shall be solely between St. Luke's and the Contractor and payments due the Contractor under the contract shall be solely the responsibility of St. Luke's; provided that such payments shall constitute Reimbursable Costs and, therefore, be subject to reimbursement pursuant to this Agreement. The contract shall conform to the terms of this Agreement, the Grant Agreement, and the Act.

#### 5.2 City as "Owner"

For the purposes of the duties owed by a contractor to an "Owner" of a construction project, St. Luke's agrees that it will require the Contractor to deem the City to be an "Owner" or a third-party beneficiary with direct rights of enforcement for those purposes.

#### 5.3 Construction Engineering

The construction of all public improvements covered by this Agreement shall conform to the most current edition of the Engineering Guidelines for Professional Engineering Services and Developments and to the 2019 City of Duluth Construction Standards as approved by Evergreen.

#### 5.4 City Involvement in Construction

Upon reasonable written notice delivered to St. Luke's, the City shall have the right but not the obligation to inspect the construction of any and all elements of the Project and shall have full

access, upon Evergreen's written request, to all reports, test results, written notes and materials and all other information pertaining to the construction of the Project and its progress; provided that the fact that the City having these rights shall not create any obligation on the part of the City to exercise these rights and the failure of the City to exercise any such rights shall not result in any liability attaching to the City. Nor shall it constitute a waiver of its right to claim damages or otherwise to seek redress for any violation of any obligation by any other person or entity of their obligations under any contract involved in the design or construction of the Project. If, within ten business days following an inspection pursuant to this Section, the City does not deliver to St. Luke's written notice that the City has discovered material defects in the portion of the construction inspected by it, then, except in the case of latent defects, the City shall be deemed to have approved the portion of the Project that was the subject of such inspection.

In connection with any inspection, the City shall: (a) comply with all health and safety rules of which the City has been informed that have been established for personnel present onsite; and (b) coordinate the inspection so that it does not interfere materially with the performance of construction. St. Luke's shall have the right to accompany, and/or have the Contractor accompany, the City during any inspection.

## ARTICLE VI Certificate of Completion

### 6.1 Completion Inspection

Upon completion of construction of the entire Project, St. Luke's will give formal notice to Evergreen thereof that the public improvements have been constructed in material accordance with this Agreement and the approved plans and specifications. Within ten days after receiving such notice/certification and record drawings as provided for in Article II above, Evergreen will inspect the Project. If the Project is in conformance with the applicable requirements, Evergreen will issue a Certificate of Completion certifying that the Project is complete. If the Project is not in conformance with the applicable requirements, Evergreen will provide formal notice to St. Luke's of the need for repair or replacement in conformance with the requirements of this Agreement. If, during the course of construction, the City has conducted inspections, then, to the extent that the City approved or was deemed to have approved the portions of the Project subject to such inspections, Evergreen shall not reject such portions as not being in conformance with the requirements of this Agreement, unless such portions do not comply with applicable laws or unless a defect arises that was latent at the time of the applicable prior inspection.

## ARTICLE VII Reimbursement of Reimbursable Costs

### 7.1 Partial Payment Requests

Subject to the receipt by the City of State Funds, made available pursuant to the Act, to reimburse St. Luke's for Reimbursable Costs incurred by St. Luke's in the construction of the Project, St. Luke's may submit a request for reimbursement of such Reimbursable Costs to the Chief Financial Officer, which request shall be in the form of that attached hereto and made a part hereof as Exhibit C and approved for payment by Evergreen and shall be accompanied by such documentation as is necessary to demonstrate compliance with the requirements of the Act, the Grant Agreement and

this Agreement and shall also be accompanied by such other documentation as shall be reasonably requested by the Chief Financial Officer.

7.1.1 Partial Payment

Upon receipt of the request for partial payment with supporting documentation approved by the Chief Financial Officer as provided for in Section 9.1 above, and subject to the provisions of that Section, the City will reimburse St. Luke's for the Reimbursable Costs documented in said request for partial Payment.

7.2 Final Payment Request

Upon issuance of the Certificate of Completion as provided for in Article VI above and the provision of the engineering documentation required pursuant Article II above, St. Luke's may request that the City reimburse it for Reimbursable Costs incurred by it in the design and/or construction of the Project (including costs related thereto). Such request shall be in the form of that attached hereto and made a part hereof as Exhibit C and shall be accompanied by such documentation as is necessary to demonstrate compliance with the requirements of the Act, the Grant Agreement and this Agreement and shall also be accompanied by such other documentation as shall be reasonably requested by the Chief Financial Officer.

7.2.1 Final Reimbursement Payments

Upon receipt of the request for final reimbursement and supporting documentation, all as approved by the Chief Financial Officer, City hereby agrees that it will reimburse St. Luke's for Reimbursable Costs incurred by it in the design and/or construction of the Project (including costs related thereto) upon the later for the following dates and occurrences:

7.2.1.1 The issuance of the Certificate of Completion as provided for in Article VI above.

7.2.1.2 The delivery of the engineering documentation required by Article II above.

7.2.1.3 The delivery of the Easement Agreement required by Article II above.

7.2.1.4 Recordation of a Declaration by City as required pursuant to the Grant Agreement.

7.2.1.5 The receipt by City of Appropriation Support Payments, as defined in and provided for in the Act, or receipt of proceeds of State bonds issued based on the Appropriation Support Payments, up to the maximum amounts set forth therein.

7.3 Maximum Amounts

Notwithstanding anything in the foregoing to the contrary, the maximum amounts which the City shall be obligated to pay to St. Luke's to reimburse if for Reimbursable Costs incurred by it in

designing and construction the Project (including costs related thereto) shall not exceed Two Hundred Eighty-Nine Thousand Eight Hundred and no/100s dollars (\$289,800.00).

#### 7.4 Payment Source

All payments from City to St. Luke's shall be payable from Fund 455 Regional Exchange District.

### ARTICLE VIII Provisions Against Liens, Assignments and Transfers

#### 8.1 Provision Against Liens

St. Luke's shall not create or permit any mortgage, encumbrance or allow any mechanic's or materialmen's liens for services or materials provided to, or on behalf of, St. Luke's to be filed or established or to remain against the Project and property upon which it is constructed or any part thereof which would materially and adversely affect the City's interest in this Agreement during the term of this Agreement, provided that if St. Luke's shall first notify City of its intention to do so and post such security as City reasonably deems necessary, St. Luke's may, in good faith, contest any such mechanic's or other liens or encumbrances filed or established as long as City does not deem its interest or rights in this Agreement to be subject to foreclosure by reason of such contest, and during the period of such contest St. Luke's shall not be deemed to be in default under this Section. For purposes of clarity, a mortgage that: (a) encumbers St. Luke's fee interest in the Property; and (b) is subject to (or does not encumber or affect) the City's interest under the Easement Agreement; shall not be prohibited (or require the consent of the City) pursuant to this Section.

#### 8.2 Provision Against Assignments, Transfers or Change in Identity of St. Luke's

The parties hereto acknowledge that City is relying upon the qualifications and identity of St. Luke's to develop and construct the Project. Therefore, except for those encumbrances that would be reflected on an ALTA commitment for title insurance on the date hereof, and except for the purposes of obtaining financing as hereinafter described and otherwise approved by this Agreement, St. Luke's represents and agrees for itself, its successors and assigns that it has not made or created, and, subject to Section 8.1 will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney with respect to the Property, and has not or will not otherwise transfer in any other way all or any portion of the Project, , this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder prior to the issuance of the Certificate of Completion described in Article VI above; and except in connection with a mortgage of the Property as permitted hereunder, , St. Luke's will not make or create or suffer to be made any such transfer of St. Luke's rights hereunder without the prior approval of City.

### ARTICLE IX Indemnification

#### 9.1 Generally

St. Luke's will to the fullest extent permitted by law, protect, indemnify and save the City Indemnified Parties, and the City will, to the fullest extent permitted by law, protect, indemnify, and save the St. Luke's Indemnified Parties, harmless from and against all liabilities, losses,



damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgements of any nature (as applicable, the "Claims") arising from:

9.1.1 Any injury to or death of any person or damage to property in or upon the Project or the Property or growing out of or in connection with the use or non-use, condition or occupancy of the Project or any part thereof by St. Luke's or the City, respectively, and the construction or installation of the Project by St. Luke's. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for St. Luke's, the City, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.

9.1.2 Any violation by St. Luke's or the City, respectively, of any provision of this Agreement.

9.1.3 Any violation by St. Luke's or the City, respectively, of any contract, agreement or restriction related to the Project which shall have existed at the commencement of the term of this Agreement or shall have been approved by St. Luke's or the City, respectively.

9.1.4 Any violation by St. Luke's or the City, respectively, of any law, ordinance, court order or regulation affecting the Project, or the ownership, occupancy or use thereof.

## 9.2 Environmental Indemnification

In addition to the generality of the foregoing above, St. Luke's hereby agrees that for itself, its successors and assigns that it will indemnify and save the City Indemnified Parties harmless from and against all Claims arising out of any condition existing on the Property on or after the date of the signing of this Agreement which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency (collectively, the "Environmental Laws"), or the presence in the Project of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to property (the "Hazardous Materials"), and that indemnification granted hereby shall include all costs of clean-up, to the extent that clean-up is required to cause the Property to be in compliance with all of the above-referenced laws, remediation to the extent that remediation is required to be in compliance with all of the above-referenced laws, together with the costs incurred in proceedings before court of law or administrative agency including attorney's fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing in the Project. Notwithstanding the foregoing, to the extent that any Claim with respect to the violation of Environmental Laws and/or the presence of Hazardous Materials that arises out of any action by the City or from omitting to take any action in connection with its obligation to maintain, repair, and replace the completed Project in accordance with the Easement Agreement, the City agrees that for itself, its successors and assigns that it will indemnify and save the St. Luke's Indemnified Parties harmless from and

against such Claims, together with costs of the nature specified in the immediately previous sentence.

### 9.3 Exception for Acts or Omissions of City

The indemnification obligations of St. Luke's and the City contained in Sections 9.1 and 9.2 above shall not apply to liability to the extent caused by the acts or omissions of the other party or its officers, agents, servants or employees.

### 9.4 Indemnification Procedures

Promptly after receipt by the applicable party of notice of the commencement of any action with respect to which the other party is required to indemnify the party receiving such notice under this Article, such indemnitee shall notify the indemnitor in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, the indemnitor shall assume the defense of such action, including the employment of counsel reasonably satisfactory to the indemnitee and the payment of expenses. In so far as such action shall relate to any alleged liability of the indemnitee with respect to which indemnity may be sought against the indemnitor, the indemnitee shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of the indemnitor.

## ARTICLE X Insurance

### 10.1 Insurance and Coverage

St. Luke's will provide and maintain or cause to be provided and maintained at all times during the process of constructing the Project an All Risk Broad Form Basis Insurance Policy. The City shall be named as an additional insured at all times on all required insurance and, during construction of the Project, St. Luke's will furnish the City with proof of payment of premiums on policies covering the following:

10.1.1 Builder's risk or hazard insurance, written on the so-called "Builder's Risk Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion (excluding footings, foundations and other subsurface improvements and also excluding paved areas, sidewalks, curbs, aprons, mass grading and other site work), and with coverage available in non-reporting form on the so called "all risk" form of policy. The interest of the City shall be protected in accordance with a clause in form and content customary in similar transactions;

10.1.2 Commercial general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations, Broadening Endorsement including contractual liability insurance) together with an Owner's Contractor's Policy with limits against bodily injury and property damage of not less than \$1,500,000.00 for each occurrence and shall be endorsed to show the City as an additional insured (to accomplish the above-required limits, an umbrella excess liability policy may be used).

10.1.3 Worker's compensation insurance, with statutory coverage and employer's liability protection.

## 10.2 Requirements of All Insurance

All insurance required under this Article shall be taken out and maintained in responsible insurance companies selected by St. Luke's which are authorized under the laws of the State to assume the risk covered thereby. Upon request, St. Luke's will deposit annually with the City a certificate or certificates of the respective insurers stating that such insurance is in force and effect during construction of the Project. St. Luke's shall give written notice to the City at least thirty (30) days before the effective date of any cancellation or modification which reduces the coverage provided below the amounts required herein. In lieu of separate policies, St. Luke's may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event St. Luke's shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Project.

## 10.3 Self-Insurance

Alternatively, and in lieu of the forgoing subsections 10.1.1, 10.1.2, and 10.1.3, St. Luke's shall provide reasonable proof of equivalent self-insurance to the City upon request.

## 10.4 Damage to Project

St. Luke's agrees to notify the City with reasonable promptness in the case of damage exceeding \$10,000 in amount to, or destruction of, the Project or any portion thereof resulting from fire or other casualty that occurs prior to completion of the Project. In the event of any such damage to or destruction of any portion of the Project, St. Luke's will, within a reasonable time and with due diligence repair, reconstruct and restore, or cause the repair, reconstruct or restoration of the Project to substantially the same or an improved condition or value as existed prior to the event causing such damage.

## ARTICLE XI           Default

### 11.1 Events of Default Defined

The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean whenever it is used in this Agreement any one or more of the following events that remains uncured by such party beyond any applicable notice, cure and/or graced period set forth in Section 13.2 below or elsewhere herein:

11.1.1       Failure by St. Luke's, as the case may be, to pay timely any ad valorem real property taxes or special assessments (to the extent any are applicable and properly payable by St. Luke's hereunder) with respect to the Property.

11.1.2       Failure by St. Luke's to cause the construction of the Project to be completed pursuant to the terms, conditions and limitations of this Agreement.

11.1.3       The holder of any mortgage on the Property or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable mortgage documents.

11.1.4 Failure by St. Luke's to substantially observe or perform any other material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

11.1.5 If St. Luke's shall:

11.1.5.1 file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar federal or state law, or

11.1.5.2 Make an assignment for the benefit of its creditors; or

11.1.5.3 Admit in writing its inability to pay its debts generally as they become due; or

11.1.5.4 Be adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of St. Luke's, as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of St. Luke's, or of the Project, or part thereof, shall be appointed in any proceeding brought against St. Luke's, and shall not be discharged within ninety (90) days after such appointment, or if St. Luke's, shall consent to or acquiesce in such appointment.

11.1.5.5 Make any representation or warranty under this Agreement that proves to have been incorrect in any material respect when made.

11.1.6 If City shall:

11.1.6.1 Make any representation or warranty under this Agreement that proves to have been incorrect in any material respect when made.

11.1.6.2 Fail to substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

## 11.2 Remedies on Default

Whenever any Event of Default referred to in Section 11.1 occurs and is continuing, the non-defaulting party, as specified below, may take any one or more of the following actions after providing thirty (30) days' written notice to the defaulting party (and any other party to this Agreement), but only if the Event of Default has not been cured within said thirty (30) days, or if said Event of Default cannot reasonably be cured within the time, the defaulting party fails to give assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured within a period of time reasonably acceptable to the non-defaulting party, but in any event not to exceed ninety (90) days.

11.2.1 If an Event of Default is caused by St. Luke's, the City may suspend its performance under this Agreement until it receives assurances from St. Luke's deemed adequate

by the City, that St. Luke's will cure the default and continue its performance under this Agreement.

11.2.2 During the continuance of an Event of Default caused by St. Luke's, the City may terminate this Agreement, except that no termination may be effective at any time that St. Luke's is proceeding in good faith to cure the defect and/or gives reasonable assurances to the City as required in Section 11.2.1 above, or if there exists a good faith dispute with the City as to an event of default as defined above, and St. Luke's posts a bond or other security as reasonably adequate to cure the alleged default.

11.2.3 If an Event of Default is caused by St. Luke's the City may take any action, including legal or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of St. Luke's under this Agreement.

11.2.4 If an Event of Default is caused by the City, St. Luke's may seek specific performance of the City's obligations hereunder and may exercise any and all other rights and remedies that it may be entitled under this Agreement, or applicable laws or in equity.

11.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City or St. Luke's is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by, statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

11.4 No Implied Waiver. In the event any provision contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

11.5 Force Majeure.

11.5.1 General. Notwithstanding anything to the contrary set forth in this Agreement, if either party is delayed in, or prevented from, observing or performing any of its obligations (other than the obligation to pay money) under, or satisfying any term or condition of, this Agreement as a result of Force Majeure; then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

11.5.2 Definition. "Force Majeure" shall mean, with respect to a party: (a) an act or omission of the other party; or (b) any other cause that is not within the reasonable control of such party (including, without limitation: (i) unusually inclement weather; (ii) the unusual unavailability of materials, equipment, services or labor; (iii) epidemics, pandemics, and other public health

circumstances resulting in a governmental declaration of a public health emergency; and (iv) utility or energy shortages or acts or omissions of public utility providers).

## ARTICLE XII Additional Provisions

### 12.1 Titles of Articles and Sections

Any titles of the several parts, Articles, and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

### 12.2 Disclaimer of Relationships

St. Luke's acknowledges that nothing contained in this Agreement nor any act by the City or St. Luke's shall be deemed or construed by St. Luke's or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between the City, St. Luke's and/or any third party.

### 12.3 Modifications

This Agreement may be modified solely through written amendments hereto executed by both St. Luke's and the City.

### 12.4 Counterparts

This Agreement is executed in any number of counterparts, each of which shall constitute one and the same instrument.

### 12.5 Judicial Interpretation

Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or attorney prepared the same, it being agreed that the agents and attorneys of both parties have participated in the preparation hereof.

### 12.6 Termination of Agreement

Unless terminated earlier pursuant to specific provision of this Agreement, this Agreement and the obligations of St. Luke's and the City shall terminate upon the completion thereof; provided, however, that any claims or causes of actions the basis for which arose prior to said time shall survive such termination and nothing herein shall be deemed as intended to limit the exercise by either party of its remedies in connection therewith except any relevant statute of limitations.

### 12.7 Conflicts of Interest

No member of the governing body or other official of the City shall participate in any decision relating to the Agreement, which affects his or her personal interests or the interests of any

corporation, partnership, or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by St. Luke's or their successors or on any obligations under the terms of this Agreement.

#### 12.8 Notices and Demands

Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, nationally recognized overnight carrier, or delivered personally and delivered to:

##### 12.8.1 In the case of St. Luke's:

St. Luke's Hospital of Duluth, Minnesota  
920 East First Street  
Duluth, MN 55805  
Attention: President/CEO

##### 12.8.2 In the case of City:

City of Duluth  
411 West First Street  
Room 120 City Hall  
Duluth, MN 55802  
Attn: Chief Financial Officer

With a copy to:

Duluth Energy Systems  
c/o Ever-Green Energy, Inc.  
305 St. Peter Street  
St. Paul, MN 55102  
Attn: General Counsel

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other, as provided in this Section.

#### ARTICLE XIII Governing Law and Venue

13.1 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

13.2 Venue. In the event either of the parties shall resort to legal proceedings in order to enforce any of the terms of this Agreement, such proceedings shall be venued in the State of Minnesota District Court for the Sixth Judicial District in Duluth, Minnesota.

IN WITNESS WHEREOF, the City and St. Luke's have caused this Agreement to be duly executed on or as of the date first above written.

CITY OF DULUTH, a Minnesota  
Municipal Corporation

ST. LUKE'S HOSPITAL OF DULUTH  
a Minnesota Nonprofit Corporation

By: \_\_\_\_\_  
Emily Larson  
Its Mayor

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

Attest:

By: \_\_\_\_\_  
Ian B. Johnson  
Its City Clerk

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

Approved:

\_\_\_\_\_  
Assistant City Attorney

Countersigned:

\_\_\_\_\_  
City Auditor



**EXHIBIT A**

**City Construction Representatives**

<b>Title</b>	<b>Name</b>	<b>Email</b>
Ever-Green Energy Inc.	Justin Reid	<a href="mailto:Justin.reid@ever-greenenergy.com">Justin.reid@ever-greenenergy.com</a>

**EXHIBIT B**

**Project Depiction**

COMMUNICATION CONDUIT PULLBOX  
 CUT CAPS AND CONNECT HWP TO EXISTING SERVICE VALVES.  
 DRAINS

PIPES STACKED ALONG WALL  
 RUNNING UNDER DUCTWORK  
 SUPPORT PIPE FROM FLOOR

PROVIDE BOLLARDS OR GUARD RAIL  
 TO PROTECT LOW PIPING  
 HWP TURNS VERTICAL TO CEILING  
 TO RUN ALONG EXISTING STEAM PIPE

ANCHOR  
 10" HWP WITH 3" INSULATION  
 1" EMT CONDUIT

GUIDE

RELOCATE LIGHT

12'H (MIN) x 11'W EXPANSION  
 LOOP, PITCHED UP OVER  
 STEAM EXPANSION LOOP

VENTS

GUIDE

RELOCATE LIGHT

COMMUNICATION CONDUIT  
 PULLBOX

ANCHOR

REMOVE OR MODIFY  
 SECTION OF DUCT AND CAP

GUIDES 24' FROM  
 CENTER OF  
 EXPANSION LOOP

REMOVE OR MODIFY  
 SECTION OF DUCT AND CAP

8-INCH SERVICE TAKEOFF WITH  
 BUTTERFLY VALVES AND BLIND  
 FLANGES FOR FUTURE BUILDING SERVICE

14' X 7'W EXPANSION LOOP

NOTES:

- HANGERS SHALL BE ROLLER HANGERS AND SPACED NO MORE THAN 20 FEET APART.
- FINAL PIPING SUPPORT SYSTEM (HANGERS, GUIDES, ANCHORS) SHALL BE REVIEWED BY AND SIGNED BY A REGISTERED PROFESSIONAL STRUCTURAL ENGINEER.
- ELECTROMAGNETIC FLOW METER REQUIRES AN UNOBSTRUCTED STRAIGHT RUN OF PIPE 10 PIPE DIAMETERS UPSTREAM AND 5 PIPE DIAMETERS DOWNSTREAM.
- ENERGY METER, TEMPERATURE SENSORS, THERMOWELLS WILL BE PROVIDED BY DES. CONTRACTOR TO INSTALL.
- FLOW METER SHALL BE INSTALLED AFTER PIPE CLEANING AND FLUSHING.
- 1 INCH EMT CONDUIT WITH PULL STRING AND PULL BOXES SHALL FOLLOW THE HWP ROUTE

HWS: 180F  
 HWR: 150F

COMMUNICATION CONDUIT  
 PULLBOX

1/2" NIPPLES WITH CAPPED QUARTER TURN  
 BALL VALVES (DP SENSOR LOCATION)

ELECTROMAGNETIC FLOW  
 METER (PROVIDED BY DES)  
 LOCATED ON HW RETURN

1" SHUNT ASSEMBLY WITH DRAINS

ANCHOR

CONNECT TO ETS

S&R DROPS WITH BLIND  
 FLANGES FOR FUTURE  
 THIRD ETS CONNECTION

PLOT DATE: 3/10/2023 12:27:31 PM FILE: \\vocasa\val\Projects\RED\S\_Lukes\_HWA\Coal\Internal\_Route\Internal\_Pipe\_Design.dwg

I HEREBY CERTIFY that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

RYAN JOHNSON  
 PRINTED NAME

SIGNATURE

03/10/2023  
 DATE  
 49918  
 LIC. NO.

DES HWP SERVICE EXTENSION- SAINT LUKES

CITY PROJECT NO.

ISSUED FOR BID  
 NOT FOR CONSTRUCTION



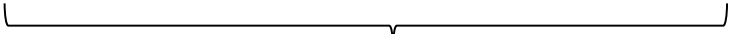
HW LAYOUT  
 SHEET NO. M1

**EXHIBIT C**

**Form Reimbursable Payment Request**

EXHIBIT C  
FORM REQUEST FOR REIMBURSEMENT

Vendor	Invoice Date	Invoice Number	Check #	Lien Waiver (Y/N)	Medical District Ramp	New Parking Ramp	6th Ave. E Construction	Hospital Demolition	Road, Utility Site Improve.	Steam Improve.	Non-Grant Eligible	Invoice Total
ABC Construction	9/1/2019	Pay Application #1	123456	Y	-	80,000.00				-	50,000.00	80,000.00
123 Engineering	9/2/2019	10000	23456	N		-	-			-	-	
<b>Draw Request #1 Total</b>						<b>80,000.00</b>				<b>-</b>	<b>50,000.00</b>	<b>80,000.00</b>


  
80,000.00      To draw request

# REIMBURSEMENT PAYMENT REQUEST

Submit completed form via email to your DEED Program Contact



<b>SECTION 1:</b>					
* VENDOR ID + REMIT TO LOCATION CODE (SWIFT):			* GRANT NAME: Regional Exchange District		
* VENDOR/GRANTEE NAME: City of Duluth			* GRANT NUMBER:		SWIFT CONTRACT ID
REMIT TO ADDRESS: 411 West 1st Street Room 120 Duluth , MN 55802			GRANT PERIOD FROM:		GRANT PERIOD TO:
			REIMBURSEMENT PERIOD FROM:		REIMBURSEMENT PERIOD TO:
FORM PREPARED BY: Wayne Parson		PHONE: 218-730-5028	GRANT NUMBER:	PAY REQUEST #: 1	FINAL: YES [ ] NO [ x]
EMAIL: wparson@duluthmn.gov			DEED PROGRAM CONTACT NAME: Erin Welle		DEED PROGRAM CONTACT EMAIL: erin.welle@state.mn.us

SECTION 2: * DEED PROGRAM USE ONLY											
SWIFT PO ID	PO LINE/DISTRIBUTION	AMOUNT	FUND	FIN DEPT ID	APPROP ID	ACCOUNT	AGENCY COST	PROJECT ID	DEED Original Grant Amount		
	1								Amount	\$0.00	
	2								Disbursed	\$0.00	
<b>TOTAL</b>				<b>NOTES:</b>						Balance AFTER this request	\$0.00

SECTION 3:											
	Column 1	Column 2	Column 3	Column 4	Column 5						
APPROVED ELIGIBLE ACTIVITIES FROM GRANT AGREEMENT (GA)	APPROVED COSTS FROM GRANT AGREEMENT	TOTAL ELIGIBLE INVOICES THIS DRAW	PREVIOUS DEED PAYMENTS TO DATE	DEED REQUESTS: PREVIOUS AND CURRENT	REMAINING UNSPENT BALANCE OF APPROVED COSTS						
Medical District Ramp											
New Parking Ramp											
6th Ave E. Extension											
Hospital Demolition											
Road, Utility, & Site Improvements											
Steam Improvements											
<b>TOTAL</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00						
<b>SWIFT ACTIVITY #884</b>			<b>\$0.00</b>		<b>TOTAL SWIFT ACTIVITY #884</b>			<b>\$0.00</b>			

**SECTION 4: AGREEMENT & AUTHORIZED APPROVAL**  
 By submitting this form, I certify that the request is in accordance with DEED cash management requirements and appropriate contract terms; and the costs are eligible for this project; the data reported is correct and the amount of the DEED Authorized signature certifies that this request has been reviewed and meets eligibility under the grant and payment is therefore recommended.

Grantee Authorized Signature _____	Date _____	DEED Staff Authorized Approval _____	Date _____	DEED Authorized Approval _____	Date _____
Grantee Typed Name and Title _____		Staff Typed Name _____		Typed Name _____	