

**AMENDMENT OF AGREEMENT BETWEEN THE CITY OF DULUTH
AND EVER-GREEN ENERGY, LLC.**

This Amendment of Agreement, effective as to the date of attestation thereto by the City Clerk as hereinafter set forth (the "Effective Date"), is by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "City", and Ever-Green Energy, Inc., as successor in interest to Ever-Green Energy Duluth, LLC, hereinafter referred to as "EGE". Each person named above may also be referred to as a "Party" or collectively as the "Parties". All capitalized terms used but not defined herein shall have the meanings set forth in that certain Agreement ("Agreement") dated June 20, 2012 by and between the Parties, as modified hereby.

THEREFORE, City and EGE agree as follows:

The amended Agreement will read as follows with deleted terms struck out and added terms underlined:

1.11 Management Services: shall mean the maintenance, operation, and oversight of the business operations of the System on behalf of the City as described in Paragraph 2 below. Business operations include such activities as marketing and sales of Energy in the name of EGE to Customers, customer service and representing the System in the community. Management Services shall be provided in accordance with System's existing guidelines, policies, procedures, agreements, and contracts with its Customers as modified or amended from time to time.

1.16 Start Date: shall mean ~~the date established by the CAO in writing to EGE DULUTH which shall be a date after the date upon which Coop management contract with the City is terminated, Coop Employees together with the newly ratified collective bargaining agreement with International Union of Operating Engineers, Local No. 70 are transitioned from the Coop to Ever-Green Energy, LLC, and~~

~~responsibility for the Management Services described herein are fully and completely transitioned from the Coop to EGE-Duluth. September 24, 2012.~~

2.3.1 No later than ~~September 1st~~ October 1st of each year, develop and transmit to the Council annual capital improvement, capital maintenance and operating budgets for the following budget year. Submitted budgets shall include sufficient capital, maintenance and operating costs to meet the System's regulatory obligations described in Paragraph 2.2.10.

2.3.6. At the request of the City ~~No later than March 15th of each year~~, provide to Finance a full financial audit of financial records of EGE-Duluth for the operation of the System for the prior financial year complying with the requirements of GAAP. Said audit shall incorporate the financial information provided by Finance pursuant to Paragraphs 3.9. and 3.10. below in the appropriate accounts of EGE-Duluth for the System.

2.3.11. Execute Customer contracts on behalf of the City provided that the City agrees to indemnify and hold harmless EGE for performance of any Customer contracts EGE executes in the event the City terminates this Agreement for any reason other than material default or otherwise makes performance of the Customer contracts impossible.

3.11 The City will provide EGE-Duluth two (2) City parking permits for use by EGE-Duluth employees when using their personal vehicles while conducting System business.

4.1. Initial Term ~~The initial term of this Agreement shall commence as of the Start Date and shall terminate on December 31, 2017, unless extended or sooner terminated as hereinafter provided for. In the event that a Party to this Agreement determines it will not renew or extend this Agreement or enter into a new agreement beyond the initial term, that Party must give notice to the other Party no later than December 31, 2016, to allow sufficient time to transition management of the System~~

~~beginning January 1, 2018.~~ The term of this Agreement shall commence as of the Start Date and shall terminate on December 31, 2025.

5.1. Management Fee: As compensation for the Management Services rendered to the City under this Agreement, the City agrees to pay to EGE-Duluth a Management Fee in the amount of \$20,000 per month, plus Reimbursable Expenses as defined in Paragraph 1.13., payable from Fund 540-920-1495-5307. The Management Fee shall commence on the Start Date of this Agreement. Beginning January 1, 2014, unless earlier terminated, the Management Fee shall increase by three percent (3%) to \$20,600 per month and shall increase by an additional three percent (3%) on January 1, 2017, to \$21,218 per month. Beginning January 1, 2018 the Management Fee will increase by the greater of two percent (2%) or the annualized increase each November in the Midwest Region Consumer Price Index- All Urban Consumers (CPI-U All Items) published by the Bureau of Labor Statistics, U.S. Department of Labor, beginning with the annualized change from November 2016 to November 2017, but in no event shall the increase be more than four percent (4%). The Midwest Region CPI-U means all items of the Midwest region includes Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin, not seasonally adjusted, 1982-84 = 100.

9.3. Requirements for All Insurance

All insurance required in this Paragraph 9. shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota. City shall be named as an "additional insured" on each liability policy other than the Crime and Workers' Compensation policies of EGE-Duluth.

10. NON-ASSIGNMENT

10.1. The parties hereto acknowledge that City is relying upon the qualifications and identify of EGE-Duluth to operate the System and property related thereto. Therefore, except as otherwise approved by this Agreement, EGE-Duluth represents and agrees for itself, its successors and assigns that it has not made or created, and 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, and has not or will not otherwise transfer in any other way all or any of its rights or obligations under this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and EGE-Duluth will not make or create or suffer to be made any such transfer of EGE's—Duluth's rights hereunder without the prior approval of the CAO.

Exhibit C The Plan will consider the structures, processes and requirements necessary to move toward a long-term self-sustaining financing capability for the System.

Except as amended herein, the terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date shown below:

CITY OF DULUTH, MINNESOTA

EVER-GREEN ENERGY, INC.

By _____

Mayor

By _____

Dated: _____

Attest

City Clerk

By _____

Dated: _____

Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney