

**AGREEMENT FOR PROFESSIONAL AND TECHNICAL SERVICES
BY AND BETWEEN**

**EVER-GREEN ENERGY, 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 Ever-Green Energy, Inc., a corporation formed under the laws of the State of Minnesota, hereinafter referred to as Consultant for the purpose of rendering services to the City.

WHEREAS, by Resolution 24-0903R of the Duluth City Council, the City accepted a grant award and agreement from the Minnesota Department of Commerce Benchmarking Grant Program—attached hereto as **Exhibit A** (“Grant”)—to support upgrades that will enable Comfort Systems and Duluth Energy Systems to track and report commercial building energy usage in compliance with the recently-enacted State of Minnesota energy benchmarking standards in Minn. Stat. 216C.331, which imposes phased requirements effective on June 1, 2025 for designated “Class 1” commercial buildings and June 1, 2026 for “Class 2” commercial buildings; and

WHEREAS, the Grant specifically identifies Consultant, which manages and operates Duluth Energy Systems (DES) under separate contract with the City, as the City subcontractor responsible for DES improvements—specifically, installation of upgraded DES steam and hot water meters, and development and implementation of a DES customer portal to track, trend, and benchmark real-time energy usage (the “Project”); and

WHEREAS, the Grant award includes a DES improvement budget of \$272,500 for all supplies, services, and labor required to complete the Project; and

WHEREAS, the City requires a portion of the DES improvement budget to procure upgraded meters and related hardware, and desires to utilize Consultant’s professional installation and software development services to complete the Project with the remaining budget proceeds.

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

I. Services

Consultant will provide 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 Director of Public Works and Utilities or his designee (“Director”). 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 Ninety-Six Thousand, Five Hundred and 00/100 Dollars (\$96,500.00) inclusive of all travel and other expenses associated with the Project, payable from Fund 540-920-1493-5310. All invoices for services rendered shall be submitted monthly to the attention of Director and Jenae Pitoscia, jpitoscia@duluthmn.gov. Payment of expenses is subject to 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 Steve Rambeck (the “Primary Consultant”). The Primary Consultant 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 Consultant. The foregoing sentence shall not preclude other employees of Consultant from providing support to the Primary Consultant 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, non-privileged information, data and records under its control for Consultant to use in the

performance of this Agreement, or 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 have 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 July 30, 2026, 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 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.

7. Indemnity

To the fullest extent permitted by law, Consultant shall defend, indemnify, and hold City and its employees, officers and agents harmless from and against any and all costs or expenses, claims or liabilities, including but not limited to, reasonable attorney's fees and expenses, whether asserted by itself or any third party, including claims arising from the acts, omissions, negligence, or misconduct of Service Provider or that of its agents, employees, or contractors. The obligations shall include, but not be limited to, the obligations to defend, indemnify, and hold harmless the City in all matters where claims of liability against the City are alleged to be or could be found to arise out of acts or omissions of Service Provider or are passive, derivative, or vicarious of the negligent or intentional acts or omissions of Consultant arise out of or relate to the services in this Agreement or Service Provider's negligent, intentional, or wrongful acts or omissions, including breach of any duty in this agreement, of Consultant. The obligations to defend, indemnify, and hold harmless shall be triggered upon the assertion of a claim for damages against City. This Section shall survive the termination of this Agreement for any reason. Consultant shall not have the obligation to indemnify the City for its intentional, willful or wanton acts. **The Consultant understands this provision may affect its rights and may shift liability.**

8. Insurance

- a. 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.
 - i. Workers' compensation insurance in accordance with the laws of the State of Minnesota.
 - ii. Commercial General 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, Independent Contractors, and Contractual Liability. Umbrella coverage with a "form following" provisions may make up the difference between the

commercial general and auto liability coverage amounts and the required minimum amount stated above.

iii. 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, Consultant hereby commits to provide at least 60 days' notice prior to any change to the Professional Liability Insurance policy or coverage; and in the event of any change, Consultant agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this 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.

iv. **City of Duluth shall be named as Additional Insured** under the Commercial General Liability and Automobile Liability. Consultant shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance. Consultant to provide Certificate of Insurance evidencing such coverage with notice to City of cancellation in accordance with the provisions of the underlying insurance policy included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Consultant's interests and liabilities.

b. Certificates showing 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.

c. 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.

- d. The certificates shall provide that the policies shall not be cancelled during the lift of this Agreement without advanced notice being given to the City at least equal to that provided for in the underlying policy of insurance.
- e. Except as provided for in Section 8.a.iv above, Consultant hereby commits to provide notice to City at least 30 days in advance of any change in the insurance provided pursuant to this Section 8 or in advance of that provided for in the underlying insurance policy or policies whichever is longer. For the purposes of Section 8 of this Agreement, the term, “changed”, shall include cancellation of a policy of insurance provided hereunder and any modification of such policy which reduces the amount of any coverage provided thereunder below the amounts required to be provided hereunder or otherwise reduces the protections provided under such policy to City

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 240
Duluth MN 55802
Attn: Director Jim Benning

Consultant: Ever-Green Energy, Inc.
305 St. Peter Street
St. Paul, MN 55102
Attn: Steve Rambeck

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.

[Remainder of this page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date of attestation shown below.

CITY OF DULUTH

EVER-GREEN ENERGY, INC.

By: _____
Mayor

By: _____

Attest:

Its: _____
Title of Representative

By: _____
City Clerk

Date: _____

Date: _____

Countersigned:

City Auditor

Approved as to Form:

City Attorney

**STATE OF MINNESOTA
GRANT CONTRACT**

This grant contract is between the State of Minnesota, acting through its Commissioner of Commerce (“State”) and City of Duluth, 411 W. 1st Street, #120, Duluth, MN 55802 (“Grantee”).

Recitals

1. Under [Minn. Stat. § 216C.02](#), subd. 1, the State is empowered to enter into this grant.
2. The State is in need of assistance to support the development of technology for implementing energy benchmarking for non-investor-owned utilities.
3. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the State. Pursuant to [Minn. Stat. § 16B.98](#), subd.1, the Grantee agrees to minimize administrative costs as a condition of this grant.

Grant Contract

1 Term of Grant Contract

- 1.1 **Effective date:** December 1, 2024, Per [Minn. Stat. § 16B.98](#), subd. 5, the Grantee must not begin work until this grant contract agreement is fully executed and the State’s Authorized Representative has notified the Grantee that work may commence. Per, [Minn. Stat. § 16B.98](#), subd. 7, no payments will be made to the Grantee until this grant contract is fully executed.
- 1.2 **Expiration date:** July 31, 2026, or until all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this grant contract: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; and 15. Data Disclosure.

2 Grantee’s Duties

The Grantee, who is not a state employee, will:

- 2.1 Comply with required grants management policies and procedures set forth through [Minn. Stat. § 16B.97](#), Subd. 4 (a) (1).
- 2.2 Execute the duties set forth in Exhibit A, which is attached and incorporated into this grant contract.

3 Time

The Grantee must comply with all the time requirements described in this grant contract. In the performance of this grant contract, time is of the essence.

4 Consideration and Payment

- 4.1 **Consideration.** The State will pay for all services performed by the Grantee under this grant contract as follows:
 - 4.1.1 **Compensation.** The Grantee will be paid the lesser of **Four Hundred Twenty-Eight Thousand Three Hundred Sixty-Six dollars (\$428,366.00)** or One Hundred percent (100.00%) of actual eligible costs incurred in the performance of the Grantee’s duties according to the breakdown of costs contained in the grant budget (Exhibit B), which is attached and incorporated into this grant contract.
 - 4.1.2 **Travel Expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Grantee as a result of this grant contract will not exceed **Zero** dollars (\$0.00) or Zero percent (0.00%); provided that the Grantee will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current “Commissioner’s Plan” established by the Commissioner of Minnesota Management and Budget (MMB). The Grantee will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State’s prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

4.1.3 **Total Obligation.** The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract will not exceed **Four Hundred Twenty-Eight Thousand Three Hundred Sixty-Six dollars (\$428,366.00)** or One Hundred percent (100.00%) of the total actual, eligible costs incurred in the performance of the Grantee’s duties specified in Exhibit A.

4.2 **Payment**

4.2.1 **Invoices.** The State will promptly pay the Grantee after the Grantee presents an itemized invoice for the services actually performed and the State’s Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the schedule as outlined in Exhibit A.

4.2.2 **Unexpended Funds.** The Grantee must promptly return to the State any unexpended funds that have not been accounted for annually in a financial report to the State due at grant closeout.

4.3 **Contracting and Bidding Requirements.** Per Minn. Stat. §471.345, grantees that are municipalities as defined in Subd. 1 must follow the law.

(a) For projects that include construction work of \$25,000 or more, prevailing wage rules apply per Minn. Stat. §§177.41 through 177.44. These rules require that the wages of laborers and workers should be comparable to wages paid for similar work in the community as a whole.

(b) The grantee must not contract with vendors who are suspended or debarred in MN: <https://mn.gov/admin/osp/government/suspended-debarred/index2.jsp>

4.4 **Budget Categories.** Upon notice to and written approval by the State’s Authorized Representative, the Grantee’s budget for any one category in Exhibit B may be increased by up to 10% of the amount shown in Exhibit B for that category, with the amount of the increase moved from one or more other categories in Exhibit B. To move more than 10% into a budget category from another budget category or categories will require an amendment to the grant contract.

5 **Conditions of Payment**

All services provided by the Grantee under this grant contract must be performed to the State’s satisfaction, as determined at the sole discretion of the State’s Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

6 **Authorized Representative**

The State’s Authorized Representative is **Virginia Rutter**, Building Program Administrator, 651-539-1015, virginia.rutter@state.mn.us or their successor, and has the responsibility to monitor the Grantee’s performance and the authority to accept the services provided under this grant contract. If the services are satisfactory, the State’s Authorized Representative will certify acceptance on each invoice submitted for payment.

The Grantee’s Authorized Representative is **Mindy Granley**, Sustainability Officer, 218-730-5334, mgranley@duluthmn.gov or their successor. If the Grantee’s Authorized Representative changes at any time during this grant contract, the Grantee must immediately notify the State.

7 **Assignment, Amendments, Waiver, and Grant Contract Complete**

7.1 **Assignment.** The Grantee shall neither assign nor transfer any rights or obligations under this grant contract without the prior written consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this grant contract, or their successors in office.

7.2 **Amendments.** Any amendments to this grant contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant contract, or their successors in office.

7.3 **Waiver.** If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or the State’s right to enforce it.

7.4 **Grant Contract Complete.** This grant contract contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract, whether written or oral, may be used to bind either party.

8 Liability

The Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this grant contract by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant contract.

9 State Audits

Under [Minn. Stat. § 16B.98, Subd. 8](#), the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this grant contract agreement or transaction are subject to examination by the Commissioner of Administration, by the State granting agency and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant contract agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

10 Government Data Practices and Intellectual Property Rights

- 10.1 **Government Data Practices.** The Grantee and State must comply with the Minnesota Government Data Practices Act, [Minn. Stat. Ch. 13](#), as it applies to all data provided by the State under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant contract. The civil remedies of [Minn. Stat. § 13.08](#) apply to the release of the data referred to in this clause by either the Grantee or the State. If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released. The Grantee's response to the request shall comply with applicable law.
- 10.2 **Intellectual Property Rights.** The Grantee shall own all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the works and documents. The "works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Grantee, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this grant contract. "Works" includes documents. The "documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Grantee, its employees, agents, or subcontractors, in the performance of this grant contract.
- 10.3 **License to the State.** Subject to the terms and conditions of this grant contract, the Grantee hereby grants to the State a perpetual, irrevocable, no-fee right and license to make, have made, reproduce, modify distribute, perform and otherwise use the works and documents for any and all purposes, in all forms and manners that the State, in its sole discretion, deems appropriate. The Grantee shall upon the request of the State, execute all papers and perform all other acts necessary, to document and secure said right and license to the works and documents by the State. At the request of the State, the Grantee shall permit the State to inspect the original documents and provide a copy of any of the document to the State, without cost, for use by the State in any manner the State, in its sole discretion, deems appropriate.
- 10.4 **Obligations.** Grantee represents and warrants that materials produced or used under this grant contract do not and will not infringe upon any intellectual property rights of other persons or entities including but not limited to patents, copyrights, trade secrets, trade names, and service marks and names. Grantee shall indemnify and defend the State, at Grantee's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the materials infringe upon the intellectual property rights of another. Grantee shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages including, but not limited to reasonable attorneys' fees arising out of this grant contract, amendments and supplements thereto, which are attributable to such claims or actions.

If such a claim or action arises, or in Grantee's or the State's opinion is likely to arise, Grantee shall, at the State's discretion, either procure for the State the right or license to continue using the materials at issue or replace or modify the allegedly infringing materials. This remedy shall be in addition to and shall not be exclusive to other remedies provided by law.

11 Workers' Compensation

The Grantee certifies that it is in compliance with [Minn. Stat. § 176.181](#), subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

12.1 **Publicity.** Any publicity regarding the subject matter of this grant contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant contract. All projects primarily funded by state grant appropriations must publicly credit the State of Minnesota, including on the grantee's website when practicable.

12.2 **Endorsement.** The Grantee must not claim that the State endorses its products or services.

13 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this grant contract. Venue for all legal proceedings out of this grant contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

14 Termination

14.1 **(a) Termination by the State.** The State may immediately terminate this grant contract with or without cause, upon 30 days' written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

(b) Termination by the Commissioner of Administration. The Commissioner of Administration may unilaterally cancel this grant contract agreement if further performance under the agreement would not serve agency purposes, or it is not in the best interest of the State.

14.2 **Termination for Cause.** The State may immediately terminate this grant contract if the State finds that there has been a failure to comply with the provisions of this grant contract, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

14.3 **Termination for Insufficient Funding.** The State may immediately terminate this grant contract if: 1) it does not obtain funding from the Minnesota Legislature, or other funding source; or 2) if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or electronic notice to the Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the grant contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.

15 Data Disclosure

Under [Minn. Stat. § 270C.65](#), subd. 3, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

1. STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05

Name: DocuSigned by: CARLA COLLINS
Signed: Carla Collins
0FAAB561D3244F4...
Date: 11/26/2024
Grant Contract / PO: SC# 258437 / FY25 PO# 3-19253

2. CITY OF DULUTH

The Grantee certifies that the appropriate person(s) have executed the grant contract on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.

Approved as to form:
Signed by: Terri Lehr
8EC1186A320645B...
Terri Lehr
City Attorney
Date: 12/11/2024 | 10:01:56 CST


Countersigned:
DocuSigned by: Josh Bailey
5DCCA8A0CCFE4D1...
Josh Bailey
City Auditor
Date: 12/11/2024 | 11:25:18 CST

3. MN DEPARTMENT OF COMMERCE

(with delegated authority)

Name: DocuSigned by: Tim Jahnke
Signed: Tim Jahnke
6F567668A468490...
Title: Deputy Commissioner/COO
Date: 12/20/2024
Distribution:
MN Dept. of Commerce, Accounting Dept.
Grantee
State's Authorized Representative (copy)

Signed by: Dave Montgomery
504CB89B59D9473...
David W. Montgomery
City Administrator
Date: 12/12/2024 | 12:22:00 CST

Attest: Signed by: Alyssa Denham
8EF7640E4477400...
Ian B. Johnson
City Clerk
Date Attested: 12/17/2024 | 12:08:58 CST


Grantee's Duties

EXHIBIT A

Project Name	<i>City of Duluth Benchmarking</i>					
Sub-Project Name						
Parent Goal	<i>The City owns two utilities that provide heating energy to buildings >50,000 sq. ft. that require funding to comply with the new benchmarking statute.</i>					
Objective Number	Ref. Id	Objective Name	Objective Description	Manager	Start Date	End Date
		Comfort Systems Natural Gas Utility Software Upgrades	Upgrade software to meet benchmarking requirements			
Ref. ID	Measure Description	Manager	Start Date	End Date	Type of Measure	Input Type
	Assess Current System	Comfort Systems/Information Technology	09/01/24	10/31/24	Narrative	Actual
	Set Objective	Comfort Systems/Information Technology	09/01/24	10/31/24	Milestone	Actual
	Risk Management	Comfort Systems/Information Technology	09/01/24	11/30/24	Narrative	Task Management
	Create Upgrade Plan	Comfort Systems/Information Technology	11/30/24	04/30/25	Milestone	Actual
	Testing and Quality Assurance	Comfort Systems/Information Technology	04/30/25	05/30/25	Narrative	Task Management
	Communication and Training	Comfort Systems/Information Technology	05/01/25	06/30/25	Narrative	Task Management
	Data Mitigation & Back up	Comfort Systems/Information Technology	05/01/25	06/30/25	Narrative	Task Management
	Monitoring and Performance	Comfort Systems/Information Technology	05/01/25	06/30/25	Narrative	Actual
	Feedback and Continuous Improvement	Comfort Systems/Information Technology	09/01/24	06/30/25	Narrative	Task Management
Ref. ID	Grant Activity	Manager	Start Date	Due Date	Show On Dashboard	Status
		Duluth Energy Systems: District Energy Metering and Software Upgrades	Upgrade metering and software to meet benchmarking requirements			
Ref. ID	Measure Description	Manager	Start Date	End Date	Type of Measure	Input Type
	Hot Water Meter Upgrades	Ever-Green Energy/Duluth Energy Systems	10/01/24	04/30/25	Milestone	Actual
	Steam Meter Upgrades	Ever-Green Energy/Duluth Energy Systems	12/01/24	05/30/25	Narrative	Task Management
	Develop framwork for customer portal	Ever-Green Energy/Duluth Energy Systems	10/01/24	06/30/25	Milestone	Actual

EXHIBIT B

Grantee's Budget

Grantee: City of Duluth

Project: Utility Benchmarking

Category	Total
Responder Labor/Fringe	\$15,020.00
Subcontractor: Comfort System	\$140,846.00
Subcontractor: Ever-Green Energy Utility Consulting	\$272,500.00
TOTAL	\$428,366.00



City of Duluth

411 West First Street
Duluth, Minnesota
55802

Certified Copy

Resolution: 24-0903R

File Number: 24-0903R

RESOLUTION AUTHORIZING ACCEPTANCE OF \$428,366 FROM THE MINNESOTA DEPARTMENT OF COMMERCE BENCHMARKING GRANT PROGRAM TO SUPPORT UPGRADES TO COMFORT SYSTEMS AND DULUTH ENERGY SYSTEMS TO MEET REQUIRED STATE OF MINNESOTA ENERGY USE DATA REPORTING.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to accept \$428,366 from the Minnesota Department of Commerce Benchmarking Grant Program to upgrade commercial steam and hot water meters. No match required.

FURTHER RESOLVED, the city of Duluth has the legal authority to accept the money, and financial, technical and managerial capacity to ensure proper planning and maintenance of the project.

FURTHER RESOLVED, the Duluth city council names the fiscal agent for this project as Jen Carlson, City of Duluth Finance Director, 411 West First Street, Duluth, MN 55802.

This Resolution was adopted unanimously.

Absent: Councilor Awal

I, Alyssa Denham, Assistant City Clerk of the City of Duluth, Minnesota, do hereby certify that I have compared the foregoing passed by the city council on 11/25/2024, with the original approved and that the same is a true and correct transcript therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth.

Alyssa Denham

12/10/2024
Date Certified

Certificate Of Completion

Envelope Id: B6EA11CB-B1B6-402A-B463-E6660A15BC31

Status: Completed

Subject: Complete with Docusign: Contract.pdf

Source Envelope:

Document Pages: 8

Signatures: 4

Envelope Originator:

Certificate Pages: 5

Initials: 0

Christine Penney

AutoNav: Enabled

Stamps: 1

411 W 1st St Room 105

Envelopeld Stamping: Enabled

Duluth, MN 55802

Time Zone: (UTC-06:00) Central Time (US & Canada)

cpenney@duluthmn.gov

IP Address: 156.99.162.253

Record Tracking

Status: Original
12/11/2024 9:20:02 AM

Holder: Christine Penney
cpenney@duluthmn.gov

Location: DocuSign

Signer Events

Terri Lehr
tlehr@duluthmn.gov
Deputy City Attorney
Security Level: Email, Account Authentication (None)

Signature

Signed by:

8EC1180A320645B...

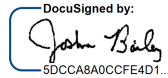
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Viewed: 12/11/2024 10:01:07 AM
Signed: 12/11/2024 10:01:56 AM

Signature Adoption: Pre-selected Style
Using IP Address: 156.99.162.253

Electronic Record and Signature Disclosure:

Accepted: 12/11/2024 10:01:07 AM
ID: b9e63f9a-be8e-49af-bfc2-0c97d2ff60c6

Josh Bailey
jbailey@duluthmn.gov
City Auditor
Security Level: Email, Account Authentication (None)

DocuSigned by:

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Sent: 12/11/2024 10:01:57 AM
Viewed: 12/11/2024 11:19:05 AM
Signed: 12/11/2024 11:25:18 AM

Signature Adoption: Drawn on Device
Using IP Address: 156.99.162.253

Electronic Record and Signature Disclosure:

Accepted: 9/14/2017 9:48:39 AM
ID: 95e81530-2b5a-4ffd-a65c-a238805e9019

Dave Montgomery
dmontgomery@duluthmn.gov
City Administrator per delegated authority
Security Level: Email, Account Authentication (None)

Signed by:

504CB89B59D9475...

Sent: 12/11/2024 11:25:20 AM
Viewed: 12/12/2024 12:21:14 PM
Signed: 12/12/2024 12:22:00 PM

Signature Adoption: Pre-selected Style
Using IP Address: 156.99.162.253

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Alyssa Denham
adenham@duluthmn.gov
Security Level: Email, Account Authentication (None)

Signed by:

8EF7640E4477400...

Sent: 12/12/2024 12:22:01 PM
Resent: 12/12/2024 1:48:35 PM
Resent: 12/17/2024 12:05:56 PM
Viewed: 12/17/2024 12:08:31 PM
Signed: 12/17/2024 12:08:58 PM



Signature Adoption: Pre-selected Style
Using IP Address: 156.99.162.253

Electronic Record and Signature Disclosure:

Signer Events	Signature	Timestamp
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accounts payable accountspayable@duluthmn.gov 24721-01 Security Level: Email, Account Authentication (None)		Viewed: 12/17/2024 1:00:01 PM Signed: 12/17/2024 1:06:54 PM
Electronic Record and Signature Disclosure: Accepted: 12/17/2024 1:00:01 PM ID: 1ce410a4-3712-4d67-859d-f8d5acd0ad83	Using IP Address: 156.99.162.253	

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Christine Penney cpenney@duluthmn.gov Security Level: Email, Account Authentication (None)	COPIED	Sent: 12/17/2024 1:06:56 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	12/11/2024 9:28:54 AM
Envelope Updated	Security Checked	12/12/2024 1:48:33 PM
Envelope Updated	Security Checked	12/12/2024 1:48:33 PM
Envelope Updated	Security Checked	12/12/2024 1:48:33 PM
Certified Delivered	Security Checked	12/17/2024 1:00:01 PM
Signing Complete	Security Checked	12/17/2024 1:06:54 PM
Completed	Security Checked	12/17/2024 1:06:56 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

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To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at kculhane@duluthmn.gov and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

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- ii. send us an e-mail to kculhane@duluthmn.gov and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari®, 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Allow per session cookies

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