

**SUB-RECIPIENT FUNDING AGREEMENT BETWEEN
CITY OF DULUTH AND
EVER-GREEN ENERGY
FOR THE DEPARTMENT OF ENERGY
COMMUNITY GEOTHERMAL HEATING AND COOLING DESIGN AND DEPLOYMENT
PROGRAM**

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (the “Effective Date”), is made by and between the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, (the “City”) and EVER-GREEN ENERGY, INC. a Business Corporation, created and existing under Minnesota Statute (2022) Chapter 302A, (the “Subrecipient”).

WHEREAS, the City, in cooperation with the Sub-recipient whose unique entity identifier in the System for Award Management is CYM5FVBRUJH3, applied for federal Community Geothermal Heating and Cooling Design and Deployment Program (hereinafter defined as “Grant”) from the Department of Energy Office of Energy Efficiency & Renewable Energy (hereinafter defined as the “EERE”), to design a new geothermal heating and cooling system in Duluth, MN for the Lincoln Park Justice40 neighborhood (hereinafter defined as the “Project”); and

WHEREAS, the City received a grant from EERE in the amount of \$700,414.00 (hereinafter defined as the “Grant”) to be utilized to implement the Project; and

WHEREAS, under the Grant terms and conditions, the amount needed to cover the Subrecipient Project scope in the grant contract is \$435,084 (hereinafter referred to as the “Subrecipient Funds”); and

WHEREAS, the City is willing to grant the Subrecipient Funds to Subrecipient for the purpose of implementing the Project, subject to Subrecipient’s willingness to perform City’s obligations under the Grant and to otherwise perform Subrecipient’s obligations under this Agreement.

NOW, THEREFORE, in consideration for the mutual benefits contained herein, the parties hereto agree as follows:

1. DEFINITIONS

- a. Application: shall mean the City’s Application of LNP 156 Geothermal Coalition: Designing and Deploying Clean Energy in a Justice40 Cold Climate Community to the Department of Energy EERE on behalf of the Project dated October 10, 2022.
- b. Director: shall mean the City of Duluth’s Sustainability Officer or their written designee.

- c. Grant: shall mean the grant agreement for the Department of Energy Office of Energy Efficiency & Renewable Energy Community Geothermal Heating and Cooling Design And Deployment Program DE-EE0010666.
- d. Grant Funds: shall mean the funds in the amount of up to Seven Hundred Thousand Four Hundred and Fourteen Dollars (\$700,414.00) granted to City by EERE for support of the Project as provided for in the Grant.
- e. Project: shall mean the implementation of the tasks two, three, and four as outlined in the Application (Exhibit B). These tasks include, but are not limited to, the analysis and design of the project along with the planning and coordination of the West Superior St. rebuild project.
- f. EERE: shall mean the Department of Energy Office of Energy Efficiency & Renewable Energy

2. GRANT AGREEMENT

- a. Sub-Recipient Bound. Subrecipient agrees to the extent that the Grant imposes any requirements or obligations on the Project or upon the availability of Grant Funds to reimburse either the City or Sub recipient for any portion of the costs of the Project, Subrecipient agrees that is shall be bound by the terms, conditions and limitations contained in the Grant Agreement.
- b. Sub-Recipient Cooperation. Subrecipient hereby commits that it will cooperate fully with City in assisting the City to meet all of its obligations under the Grant to the extent that it can, including but not limited to abiding all of the requirements and obligations imposed on City pursuant to the Grant and providing all information and documentation required by EERE under the Grant in order to demonstrate compliance with the requirements of the Grant and access to the Grant Funds.

3. SUB-GRANT

Subject to the terms and conditions of this Agreement, City hereby agrees to sub-grant to Subrecipient the Grant Funds up to the full amount thereof to reimburse Subrecipient for a portion of its cost of the Project.

4. SUB-RECIPIENT REIMBURSEMENT

City agrees that Subrecipient may request that the City reimburse it for all or a portion of the costs incurred by it in the implementation of the Project in accordance with the provisions of Grant Agreement up to the amounts of the costs incurred by Subrecipient as of the time of the request. Such request shall be accompanied by such documentation as is necessary to demonstrate compliance with the requirements of the Grant and this Agreement and shall also be accompanied by such other documentation as shall be reasonably requested by the City Finance Director, or their designee.

Provided, however, that City shall not be required to make any reimbursement payment to Subrecipient unless and until the City has received Grant Funds from EERE to make any such payment.

5. SPECIAL SUB-GRANT CONDITIONS

In addition to the other terms and conditions of this Agreement and the conditions of the Grant, the following conditions shall apply to the Sub-grant to Subrecipient hereunder:

- a. Subrecipient agrees to complete the project in accordance with approved Application and scope of work form included in the Grant.
- b. Subrecipient will only submit project expenses approved by the project budget.

6. REDUCTION OF GRANT AMOUNT

Notwithstanding anything to the contrary, the Subrecipient understands and agrees that any reduction or termination of the Grant Funds may result in a like reduction or termination of the Sub-grant hereunder, and that any material change in the timeline or scope of the project must be approved in writing by the City and EERE.

7. DEFAULTS AND REMEDIES

The Subrecipient must comply with all requirements of the Grant applicable to the City and to the requirements of this Agreement. Subrecipient's default will constitute noncompliance with this Agreement. If the City finds that there has been a failure to comply with the provisions of this Agreement or that of the Grant, the City may Declare Subrecipient to be in default of this Agreement and may terminate this Agreement, may refuse to disburse additional funds, may require the return of all or part of the funds already disbursed, may seek equitable relief to enforce the terms of this Agreement or any combination thereof; the exercise of any of the rights hereinbefore referenced shall not be exclusive to the exercise of any other such right.

8. TIME OF PERFORMANCE

Subrecipient shall complete the project on or before October 1, 2024. The City is not obligated to reimburse Subrecipient for any Project costs incurred or submitted to City after that date or any earlier termination, whichever occurs first. Consistent with the payment schedule and project milestones established in Exhibit B, Subrecipient agrees to the following:

- a. Subrecipient agrees to contact the City at least 30 days prior to the completion of each task and sub-task they are coordinating as identified in Exhibit B.

9. NOTICES

Communications and details concerning this Agreement must be directed to the following Agreement representatives:

City of Duluth
Attn: Mindy Granley
411 W 1st Street, Room 418
Duluth, MN 55802

Ever-Green Energy
Attn: Michael Ahern
305 St. Peter Street
Saint Paul, MN 55102

10. GENERAL CONDITIONS

The Subrecipient agrees to comply with applicable federal, state and local laws and regulations governing the project and funds provided under this Agreement.

11. INDEPENDENT CONTRACTOR

Nothing contained in this Agreement is intended to, or may be construed in any manner, as creating or establishing a relationship of employer/employee between the parties. The Subrecipient will at all times remain an independent contractor with respect to the services to be performed under this Agreement. The City is exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance because of the Sub-recipient is an independent contractor.

12. LIABILITY

Each party hereto agrees that it will be solely liable for any liability arising out of acts or omission of itself or its officers, agents, employees or subcontractors in the performance of its respective obligations under this Agreement. Nothing herein shall be deemed to create any liability on behalf of either party not otherwise existing as to such party under the provision of the Minnesota Municipality Limitation of Liability Statue, Minnesota Statue Section 466 et. Seq., or to extend the amount of liability of either party to amounts in excess of that specified in said Chapter.

13. IDEMNIFICATION

Subrecipient will indemnify, defend, and hold harmless the City, its officers, agents, and employees, from any claims or causes of action, including attorney's fees arising from

the performance of this Agreement by Sub-recipient, or its officers, agents or employees.

14. WORKERS COMPENSATION

The Subrecipient must provide workers' compensation insurance coverage for all employees involved in the performance of this Agreement if required by law

15. ADMINISTRATIVE REQUIREMENTS

The Subrecipient agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices to properly account for expenses incurred under this Agreement.

16. RECORDS

- a. Retention. The Subrecipient must retain all records pertinent to expenditures incurred under this Agreement until conclusion of the latest of six years after Subrecipient has completed the project.
- b. Data Practices Act. Sub-recipient must comply with the Minnesota Government Data Practices Act, Chapter 13.
- c. Close-Outs. The Sub-recipient's obligation to the City does not end until all closeout requirements are completed.
- d. Payments. The City will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and City policy concerning payments. Payments may be adjusted at the option of the City in accordance with advance funds and program income balances available in Subrecipient accounts.

17. MISCELLANEOUS

- a. Assignability. The Subrecipient may not assign or transfer any interest in this Agreement (whether by assignment or novation) without the prior written consent of the City; Notice of any such assignment or transfer must be furnished promptly to the City.
- b. Copyright. If this Agreement results in any copyrightable material, the author is free to copyright the work, but the City and/or EERE reserves the right to royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for government purposes.

[Remainder of this page is intentionally left blank.]

IN WITNESS WHEREAS, the parties have hereunto set their hands the day and date shown below.

CITY OF DULUTH:

By: _____

Its Mayor

STATE OF MINNESOTA)
) SS
COUNTY OF ST. LOUIS)

This instrument was acknowledged before me on _____, 2023, by Emily Larson, Mayor of the City of Duluth, a municipal corporation organized and existing under the laws of the State of Minnesota.

Notary Public

Attest: _____

Its: City Clerk

Date Attested: _____, 2023

STATE OF MINNESOTA)
) SS
COUNTY OF ST. LOUIS)

This instrument was acknowledged before me on _____, 2023, by Ian Johnson, City Clerk of the City of Duluth, a municipal corporation organized and existing under the laws of the State of Minnesota.

Notary Public

Countersigned:

By: _____

Its Auditor

STATE OF MINNESOTA)
) SS
COUNTY OF ST. LOUIS)

This instrument was acknowledged before me on _____, 2023, by Josh Bailey, Auditor of the City of Duluth, a municipal corporation organized and existing under the laws of the State of Minnesota.

Notary Public

Approved as to form:

By: _____

City Attorney

STATE OF MINNESOTA)
) SS
COUNTY OF ST. LOUIS)

This instrument was acknowledged before me on _____, 2023, by Rebecca St. George, City Attorney of the City of Duluth, a municipal corporation organized and existing under the laws of the State of Minnesota.

Notary Public

Subrecipient:

Ever-Green Energy

By: _____

Name: Michael Ahern

STATE OF MINNESOTA)
) SS
COUNTY OF ST. LOUIS)

This instrument was acknowledged before me on _____, 20__ by
_____, the _____ of Ever-green Energy a Minnesota Business
Corporation, on behalf of the corporation.

Notary Public

This instrument was drafted
by:
Assistant Duluth City Attorney
Room 410
DEDA Hall
Duluth, Minnesota 55802
(218)730-5490