

**DULUTH ENERGY SYSTEMS
MANAGEMENT SERVICES AGREEMENT
EVER-GREEN ENERGY, INC. & CITY OF DULUTH**

THIS AGREEMENT, effective as of the date of attestation thereto by the City Clerk as hereinafter set forth (the “Effective Date”), is entered into 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. a corporation formed under the laws of the State of Minnesota, hereinafter referred to as “Ever-Green”.

WHEREAS, City is the owner of Duluth Energy Systems (“System”), which provides energy in the form of steam, hot water and cooled water to various Customers in Duluth’s Downtown, Canal Park and East Hillside neighborhoods through a district energy system; and

WHEREAS, the City understands the importance of having robust energy infrastructure to provide reliable and affordable energy services to serve the needs of its businesses and residents; and

WHEREAS, district energy systems are proven to be flexible, efficient and reliable infrastructure, capable of integrating in a variety of energy sources, including renewables and low carbon energy sources to affordably meet the energy needs of its customers while reducing carbon emissions; and

WHEREAS, Ever-Green has managed and operated the System on behalf of City since September 24, 2012; and

WHEREAS, the parties wish to enter into a new contract with Ever-Green to continue general operation and management of the System and its ongoing work to advance the System and improve its efficiency; and

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

1. **DEFINITIONS**

The following terms and phrases shall have the meanings defined below:

- 1.1. CA: shall mean the City Administrator or such other person or office in the City which the CA shall designate in writing to Ever-Green.
- 1.2. Capital Maintenance and Improvements: shall mean maintenance and improvement projects shown in the approved budgets, as provided for in Paragraph 3.1, below, as Capital Maintenance and Improvement projects and such other maintenance and improvement projects or work determined by the CA to be of such a size, scope or expense as to make it unreasonable to classify them as Routine Maintenance.
- 1.3. City Costs: shall mean all costs incurred by the City in support of the System and its operation and maintenance including but not limited to the cost of goods or services incurred for the benefit of the System, the cost of insurance purchased for the benefit of the System and the costs associated with any self-insurance program established by City for the benefit of the System, the value of City services provided to Ever-Green or to the System for the benefit of the System, and the amount of the PILOT.
- 1.4. Council: shall mean the City Council of the City of Duluth.
- 1.5. Customer: shall mean any person or entity owning, controlling, using or occupying any building or property in the areas served by the System who applies for, agrees to pay for, or agrees to be responsible for products or services of any kind from the System provided to said building or property.
- 1.6. Duluth Energy Systems ("DES") Employees: shall mean the persons employed in the management and operation of the System by Ever-Green on the effective date of this Agreement, which persons and positions are identified by name on Exhibit A (as modified or amended from time to time by mutual consent of the CA and Ever-Green) attached hereto and made a part hereof.
- 1.7. Energy: shall mean steam, hot water, cooled water or any other energy source used to provide heating or cooling to buildings or property in the areas served by the System.
- 1.8. Finance: shall mean the City of Duluth Department of Finance to the attention of the City Auditor.
- 1.9. GAAP: shall mean Generally Accepted Accounting Principles.
- 1.10. Management Fee: shall mean the monthly fee paid by the City to Ever-Green under the terms pursuant to Paragraph 7.1. below.
- 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 DES 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.
- 1.12. PILOT: shall mean the amount of the Payment In Lieu of Taxes authorized by the State of Minnesota to be collected by City from Customers and paid to the City's funds in lieu of taxes on the property of the System.

- 1.13. Reimbursable Expenses: shall mean all labor costs associated with the DES employees identified in Exhibit A and all other costs and expenses: (1) authorized by City in compliance with financial and purchasing requirements and limitations set forth in this Agreement (including but not limited to Sections 3 and 4, below) and any other applicable federal, state, and/or local requirements; and (2) incurred directly by Ever-Green in the course of providing Management Services. On an annual basis, Ever-Green shall identify all reasonably anticipated expenses in the City budgets approved pursuant to Paragraph 3.1., below, and sample of such reasonably anticipated costs and expenses is attached hereto as Exhibit B (as modified or amended from time to time by mutual consent of the CA and Ever-Green) and made part hereof. Reimbursable Expenses shall exclude costs and expenses paid directly by City, and the Parties will review and jointly determine which expenses shall be paid directly by the City on an ongoing basis. Reimbursable Expenses invoiced to City shall be limited to the actual, direct costs and expenses incurred by Ever-Green, with no added fees, overhead, profit, or other mark-up.
- 1.14. Routine Maintenance: shall mean any and all maintenance, repair or replacement of any portion of the System which is usual and customary in the ordinary or day-to-day operation of the System and not designated by the CA or City budgets as Capital Maintenance and Improvements.
- 1.15. Start Date: shall mean January 1, 2026.
- 1.16. System: shall mean Duluth Energy Systems, formerly known as Duluth Steam District No. 1, located in Downtown Duluth, Canal Park and in the East Hillside neighborhood, as it exists as of the effective date of this Agreement and as it may, from time to time, be expanded, supplemented, contracted, or modified, including all steam, hot water, cooled water, and electrical power generating facilities and equipment together with all buildings, structures, hot or chilled water storage facilities, piping, valves, meters and equipment, inventory and other City-owned property of any kind whatsoever, whether located on City-owned property or easements or on private property, used in the generation of steam, hot water, or cooled water and electrical power and its distribution as part of the business of the System.
- 1.17. System Advisory Board (the "SAB"): shall mean the board described in Paragraph 4.4. below.

2. EVER-GREEN OBLIGATIONS

Subject to the direction of the CA and the terms and conditions of this Agreement, Ever-Green shall provide Management Services necessary for the complete administration, operation and maintenance of the System, including but not limited to the following:

2.1. Employment Related

- 2.1.1. Employ, provide and pay for all administrative, professional including managerial and legal, skilled and unskilled labor and any other personnel necessary for the performance of Ever-Green's responsibilities under this Agreement. All such persons shall be qualified to perform the services they are hired to perform and, where applicable, properly licensed, permitted, and/or credentialed by the

appropriate and relevant authorities to perform said work. All such persons shall be employees or agents of Ever-Green and not of City.

- 2.1.2. Hire, train, supervise, control, discipline and terminate any employees, agents or subcontractors as is appropriate and necessary to the efficient performance of Ever-Green's responsibilities under this Agreement.
- 2.1.3. Pay all employees and agents of Ever-Green providing service to the System in accordance with applicable contracts and provide applicable payroll services, withholdings and reporting necessary thereto.

2.2. System Maintenance and Operation

Subject to the direction of the CA and the terms and conditions of this Agreement, Ever-Green shall provide Management Services necessary for the complete administration, operation and maintenance of the System, including but not limited to the following:

- 2.2.1. Safely operate and control the System so as to provide Energy to all System Customers in quantities and within time frames as needed by such Customers and in a manner which will deliver said Energy to said Customers in the most efficient and cost-effective manner possible in accordance with normal business practices, Customer contracts, and to the extent practical within the capabilities of the System at a given time and in accordance with laws, rules and regulations related to System operations described in 2.2.10.
- 2.2.2. Perform all required Routine Maintenance of the System and all component parts thereof to keep the System operational and to fulfill the requirements of Paragraph 2.2.1. above to the extent practical.
- 2.2.3. Both Parties understand the critical nature of the services provided by the System, and that from time to time the System will need to undergo repairs, replacements, improvements or extensions. As the manager of the System, Ever-Green shall, when necessary to make repairs or extensions to mains, pipes, conduits, service connections, or generating plants, have the right to temporarily shut off the supply of steam, hot water or chilled water to the premises of any Customer in accordance with the System's Customer contracts, provided a reasonable notice of such intention is given to the Customer and the repairs or such extensions are made with due diligence, and priority is given to restoring services to facilities necessary for the protection of human life, health, and safety. Ever-Green shall regularly review the System's policies and procedures regarding service interruptions and recommended changes as necessary. Any changes to said policies or procedures must be reviewed by the SAB and approved by the CA.
- 2.2.4. Maintain copies of all plans, specifications, technical and operating manuals, maintenance records, operating history and other documents pertaining to the construction, reconstruction, repair, maintenance and operations of the System provided to Ever-Green by the City at the commencement of this Agreement and created during Ever-Green's management of the system. All such information and documents shall be the property of the City and, upon termination of this

Agreement, shall be turned over to City and otherwise made available to the City upon request.

- 2.2.5. Maintain adequate supplies of fuel and spare parts necessary for the maintenance and operation of the System as set forth in Paragraphs 2.2.1 and 2.2.2 above, to the extent provided in the budget approved by the City.
- 2.2.6. Work with City Purchasing to purchase all fuel, parts and equipment and the services of contractors to perform construction, reconstruction and Capital Maintenance and Improvements of the System in accordance with Section 4, below, the City Charter and Code, and applicable federal and/or state municipal purchasing requirements.
- 2.2.7. Prepare and file all reports and information required by all federal or state regulatory agencies or authorities having authority over any aspect of the facilities or operations of the System.
- 2.2.8. Make no structural changes in or additions to the System without prior budget approval or written approval of the CA, except for hooking up or disconnecting steam, hot water, or cooling service Customers into existing lines.
- 2.2.9. Keep the System operational and maintain the system in the same general condition or better than it was in at the commencement of this Agreement, reasonable wear and tear excepted.
- 2.2.10. Operate and maintain the System in conformance with all applicable Federal, State and local laws, ordinance, rules, agreements, regulations and codes, including but not limited to those pertaining to employment, safety, industrial and environmental issues, applicable to the maintenance and operation of the System, and promptly provide copies of all reports received by Ever-Green regarding compliance therewith or relating to the condition of the System or any portion or component part thereof.

3. FINANCIAL MATTERS

- 3.1. No later than 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. Ever-Green shall be responsible for operating the System within the annual budget and appropriations established by the City Council through its adopted annual budget ordinance. Ever-Green shall manage expenditures accordingly and shall not incur costs or financial obligations that exceed the approved City budget. All financial activities shall comply with applicable municipal budgetary controls and fiscal policies.
- 3.2. Working together with the CA, secure approval of said budget from Council.
- 3.3. Maintain complete books and records in accordance with GAAP of all income, expenses, liability and assets pertaining to the System and to its operation and maintenance.
- 3.4. No later than the Fifteenth (15th) day of each month, provide to Finance an invoice that includes a statement of all Ever-Green income and expenses, including Reimbursable

Expenses, resulting from the management of the System for the prior month, including copies of all bills and receipts. Such supporting documentation shall be subject to the approval of the City Finance Director. Notwithstanding the above, Ever-Green shall submit to the Finance Director biweekly invoices for its labor expenses resulting from the management of the System.

- 3.5. At the request of the City, provide to the Finance Director a full financial audit of financial records of Ever-Green 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 in the appropriate accounts of Ever-Green for the System.
- 3.6. Prepare and maintain a Five-Year Strategic Plan ("Plan") for the long-term development, operation, and financial sustainability of the System. The scope of the Plan shall be as detailed in Exhibit C and include capital improvement projections, rate analysis, and other key operational and financial components.
- 3.7. The Plan shall be reviewed and updated at least annually (and at such additional times deemed necessary by the Parties). Each annual update shall be presented to the City Administrator and Finance Director prior to the annual budget, and shall be submitted to the City Council upon request. Updates shall reflect current conditions, anticipated needs, and any changes in financial or regulatory assumptions.
- 3.8. Develop and recommend for approval by Council appropriate rates for the sale and provision of services to Customers, which rates shall be sufficient to fund the approved budget for the System including the cost of debt service, Capital Maintenance and Improvements approved by Council, operating expenses, Reimbursable Expenses, Routine Maintenance costs, City Costs, the PILOT, operating and capital reserves in accordance with GAAP, and any other Council-approved costs associated with the System. Rate structures shall be consistent with the rate structure in effect the Effective date of this Agreement, unless and until a modification is approved by Council.
- 3.9. Invoice to and collect from Customers monthly all payments due for product and services provided to such Customers at the rates approved by Council. In the event that a Customer fails to enter into or extend an existing agreement for services, or defaults in its payments for steam, hot water or chilled water service, Ever-Green shall follow the System's written guidelines, policies and procedures concerning notice and hearing, discontinuing or refusing service to a Customer, and collection of past due/delinquent account balances. Ever-Green must take all reasonably available steps and efforts to resolve Customer account and billing issues and/or collect of past-due account balances without the need for judicial and/or administrative (e.g., Revenue Recapture Act) action. If such efforts prove unsuccessful, Ever-Green shall notify and consult with City, which may pursue any formal judicial and/or administrative (e.g., Revenue Recapture Act) collection actions deemed necessary by the CA and/or City Attorney's Office.
- 3.10. Ever-Green shall regularly review the System's guidelines, policies and procedures regarding service interruptions, discontinuing service, and collection of past-due or delinquent accounts and recommended changes as necessary. Changes to said

guidelines, policies, and procedures shall be reviewed by the SAB and approved by the CA.

- 3.11. No later than Thursday of each week, remit to Finance all payments received from Customers and any other party received by Ever-Green during the prior seven (7) calendar days.
- 3.12. Execute Customer contracts on behalf of the City provided that the City agrees to indemnify and hold harmless Ever-Green for performance of any Customer contracts Ever-Green 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.
- 3.13. Ever-Green shall actively identify available federal, state, local, and private grant opportunities to support Capital Maintenance and Improvement projects related to the System. Where appropriate and as determined by the prior mutual consent of the CA and Ever-Green, Ever-Green shall be responsible for preparing and submitting grant applications, in coordination with the City as necessary, and for providing all required supporting documentation. Ever-Green shall also assist in the administration and compliance reporting of any grants awarded, to the extent applicable. The pursuit of grant funding shall align with the capital priorities identified in the Plan and other City-approved planning documents.
- 3.14. Ever-Green shall notify the City's Finance Director no later than June of the year prior to the year in which bond proceeds will be required for capital projects. Such notification shall include the proposed purpose, amount, structure, and timing of the financing. Ever-Green shall also develop and maintain a sustainable funding plan to support repayment of any associated debt obligations, including principal, interest, and related costs, without reliance on unapproved City appropriations. The funding plan shall be included in the Strategic Plan and updated annually.

4. PURCHASING

- 4.1. Within the approved budget and to the extent authorized under the Purchasing Made Simple for Duluth Energy Systems policy, attached hereto as Exhibit D, as may be amended from time to time by the City Purchasing Agent, ("DES Purchasing Policy"), purchase directly as manager of System all supplies, goods and services identified as Reimbursable Expenses on Exhibit B.
- 4.2. Subject to the approved City budgets and DES Purchasing Policy, request that City Purchasing purchase all other goods, equipment, supplies, fuel and contract services necessary to the operation, maintenance and improvement of the System, and supply all information necessary to the City Purchasing Agent to purchase the same and use the services of the City Purchasing Agent to make such purchases. All such purchases and purchasing procedures shall be subject to and conform to the requirements of applicable federal and state law, the City's Code, Charter, and applicable City Purchasing requirements, policies, and procedures.
- 4.3. In the event of an emergency beyond the control of Ever-Green which requires that goods or services be purchased outside of the scope of the Reimbursable Expenses set

forth in Exhibit B or pre-approved Capital Maintenance and Improvement and Routine Maintenance projects identified in City-approved budgets, Ever-Green may make such purchases, provided that such purchases remain within the City Council's annual spending appropriations for the System and that notification is provided to the CA and City Purchasing Agent as set forth in Exhibit D.

4.4. System Advisory Board

4.4.1. Maintain and staff a System Advisory Board, hereinafter referred to as "SAB", consisting of a representative membership of System's Customers and community to meet no less than semi-annually for the purpose of receiving reports on from Ever-Green on the operation of the system and advising Ever-Green on matters pertaining to the operation and maintenance of the System including services provided and rates charged. The SAB shall have a minimum of five members. Membership and operations of the SAB shall be subject to the approval of the CA.

4.5. Annual Customer Survey

4.5.1. Annually survey Customers to measure the experience of the System's Customers. Results shall be summarized and shared with the City and SAB.

5. CITY OBLIGATIONS

City shall be responsible for performing the following tasks and provide the following services in the time frames hereinafter set forth.

- 5.1. Provide and pay for all administrative services, professional services, including legal services, and labor services sufficient and necessary to the performance of City's responsibilities as set forth in this Agreement.
- 5.2. Provide copies of all plans, specifications, manuals and other documents in City's possession pertaining to the system to Ever-Green for their use in operating and maintaining the System, provided that all such documents shall remain the property of City and shall be returned to City in good condition upon expiration or earlier termination of this Agreement.
- 5.3. Review and approve the annual budgets for the System, referenced in Paragraph 3.1. above, in time frames allowing their implementation for the next budget year, subject to receipt thereof from Ever-Green in time frames permitting considered review and approval thereof. The approved budgets shall include sufficient funding to allow Ever-Green to meet the obligations contained in Section 2.2., above.
- 5.4. Maintain budgeting, purchasing, and procurement approval processes that enable Ever-Green to reasonably obtain approval of authorized expenditures.
- 5.5. Review and approve the financial plans, bond financing, grant applications and recommendations, and the Strategic Plan for the System described in the attached in Exhibit C and the above Section 3.
- 5.6. Process payments to Ever-Green for labor expenses resulting from the management of the System as soon as reasonably practicable, and in no event longer than 7 days following receipt of an invoice from Ever-Green.

- 5.7. No later than the first Monday of the month following the month to which they are attributable, pay to Ever-Green the Management Fee attributable to said month as set forth in Paragraph 7.1. below.
- 5.8. No later than 35 days after receipt of an invoice for Reimbursable Expenses incurred by Ever-Green, reimburse Ever-Green for said Reimbursable Expenses in amounts approved pursuant to Paragraph 1.12. above.
- 5.9. No later than the Tenth (10th) day of the month following the month in which they paid by City, transmit to Ever-Green a full accounting of all expenses paid by City during the preceding month which are chargeable to the budgets for the System.
- 5.10. In conformance with the requirements of State statute and the City's Charter and Code, purchase and contract for all goods, equipment, supplies, fuel and services required for the operation, maintenance and betterment of the System as are provided for in the approved budgets, except purchases made and Reimbursable Expenses incurred directly by Ever-Green and authorized under the DES Purchasing policy and approved City budgets.
- 5.11. Provide Ever-Green two (2) City parking permits for use by Ever-Green employees when using their personal vehicles while conducting System business.
- 5.12. Furnish Ever-Green the right to remotely monitor alarms and the performance of the System during the term of this Agreement.

6. TERM AND TERMINATION

- 6.1. Initial Term: The initial term of this Agreement shall commence as of the Start Date and shall terminate on December 31, 2030, unless extended or sooner terminated as hereinafter provided for. The Agreement may be extended upon mutual consent of the Parties for up to two additional five-year terms.
- 6.2. Termination: This Agreement shall be subject to early termination as follows:
 - 6.2.1. If either party materially breaches the Agreement, the other party shall give written notice of such breach, specifying the nature of the breach and, as appropriate, the corrective measures required and allowing the breaching party reasonable time to cure, not to exceed thirty (30) days. If the breach is not corrected within such 30-day period, or is incapable of being cured, the non-breaching party may terminate this Agreement immediately by written notice to breaching party.
 - 6.2.2. If either party files a petition in bankruptcy or has such filed against it, which is not removed in 30 days, or has a receiver appointed or seeks protection under any insolvency law or make assignment for the benefit of creditors, the other party may terminate this Agreement immediately and automatically to the extent permitted by law.
 - 6.2.3. Notwithstanding anything herein to the contrary, beginning on December 31, 2027, either party may terminate this Agreement at any time upon written notice given by the terminating party (for any reason, including the convenience of the terminating party) to the non-terminating party at least three-hundred and sixty-five (365) days prior to the effective date of the termination of this Agreement specified by the terminating party.

6.3. Effect of Termination.

6.3.1. The City agrees that any termination as of the effective date of termination above shall not relieve City of its obligation to pay Ever-Green all approved Services incurred under this Agreement, provided that Ever-Green has not committed a material breach of this Agreement. Nothing contained in this section shall prevent either party from pursuing or collecting any damages to which it may be entitled by law, and the right of termination under this Section is in addition to any other remedies at law or equity available to the non-breaching party.

6.3.2. Ever-Green will use its best efforts to cancel or assign, as requested by City, any then existing contracts entered into by Ever-Green in connection with the System, Evergreen's Management Services, or this Agreement. Any non-cancelable or non assignable contract entered into by Ever-Green at City's written request and not completed or expired at the time of termination of this Agreement will be (a) completed by Ever-Green unless City directs Ever-Green, in writing, to the contrary; and (b) paid for by City. In the event City so notifies Ever-Green, Ever-Green will use best efforts to transition or license all specified rights and obligations under such agreements to City or City's designated agent.

6.3.3. If requested by City, Ever-Green will use its best efforts to cancel any materials or services that Ever-Green has committed itself to purchase with City's prior written approval (or any uncompleted work previously approved by City). Any materials or services that Ever-Green is unable to cancel will be paid for by City and the associated materials or any benefits associated with any services will be transferred or otherwise provided by City for City's benefit.

6.3.4. Upon expiration or termination of this Agreement, Ever-Green shall promptly transfer, assign, and make available to City or its representatives all property and materials in Contractor's possession or control belonging to and paid for by City.

6.4. Non-appropriation: The City's obligation to make payments during any City fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the City shall have the right to terminate the contract. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred, but not amortized in the price of the supplies or services delivered under this Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid for any appropriations available for that purpose.

7. FEES

7.1. Management Fee: As compensation for the Management Services rendered to the City under this Agreement, the City agrees to pay to Ever-Green a Management Fee in the amount of \$27,000 per month, plus Reimbursable Expenses as defined in Paragraph 1.12., payable from Fund 540-920-1495-5307. The Management Fee shall commence on the Start Date of this Agreement. Beginning January 1, 2027, 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 2025 to November 2026, 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.

- 7.2. Additional Services: The Parties agree that this Agreement does not include all of the professional services that Ever-Green is capable of providing or that may be requested of Ever-Green by the City. In the event the City determines that additional services are needed from Ever-Green, the Parties agree to meet and confer and exert their best efforts to reach a mutually acceptable agreement on the terms and conditions under which Ever-Green will perform said service or services. Ever-Green's standard rates (defined to include the wage rates, taxes and benefits associated with the total compensation for an employee expressed as an hourly rate) shall apply for Additional Services.

8. STANDARD OF PERFORMANCE

- 8.1. Ever-Green agrees that all services to be provided to City pursuant to this Agreement shall be in accordance with the generally accepted practices of the profession for provision of services of this type.

9. RECORDS AND INSPECTIONS

9.1. Establishment and Maintenance of Records

- 9.1.1. Records shall be maintained by Ever-Green in accordance with requirements prescribed by City at the execution of this Agreement and such other prospective records required 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.

9.2. Documentation of Costs

- 9.2.1. Ever-Green 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.

10. REPORTS AND INFORMATION

Ever-Green shall be responsible for furnishing to City records, data and information as City may reasonably require pertaining to matters covered by this Agreement.

11. AUDITS AND INSPECTIONS

- 11.1. Ever-Green shall ensure that at any time during normal business hours and as often as City may deem necessary, there shall be made available to City for examination,

all of its records with respect to all matters covered by this Agreement. Ever-Green will also permit City, Minnesota Office of the State Auditor, or any third party contracted by 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.

12. CONFIDENTIALITY OF INFORMATION

- 12.1. All reports, data, information, documentation and material given or prepared by the Ever-Green pursuant to this Agreement will be confidential and will not be released by Ever-Green without prior authorization in writing from CA except as required for the performance of Ever-Green's services or as required by law. All data collected, created, received, maintained or disseminated for any purpose by the Parties because of this Contract is governed by the Minnesota Data Practices Act.

13. OWNERSHIP OF DATA

- 13.1. All survey notes, reports, design plans, specifications, special studies, records and other data prepared under this Agreement shall become the property of City upon completion or termination of the services of Ever-Green.

14. INDEPENDENT CONTRACTOR

- 14.1. It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting Ever-Green as an agent, representative or employee of City for any purpose or in any manner whatsoever. Ever-Green and any officers, employees, contractors, or agents thereof, including but not limited to the DES Employees, shall not be considered an employee of City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of Ever-Green while so engaged and any and all claims whatsoever on behalf of Ever-Green arising out of employment or alleged employment, including without limitation, claims of discrimination against City, its officers, agents, contractors or employees shall in no way be the responsibility of City. Ever-Green and its officers, agents, contractors and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay from the City. Furthermore, City shall not, in any way, be responsible to defend, indemnify or save harmless Ever-Green from liability or judgments arising out of the intentional or negligent acts or omissions of Ever-Green and any officers, employees, contractors, or agents thereof, including but not limited to the DES Employees, while performing the work specified by this Agreement.

15. INDEMNITY AND INSURANCE

- 15.1. Indemnity

- 15.1.1. To the fullest extent permitted by law, Ever-Green agrees that it shall defend, indemnify, and hold harmless the City, its officers, employees, and agents, 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 Ever-Green or any third party. Said obligations to defend, indemnify, and hold harmless shall include, but not be limited to the obligation to defend, indemnify, and hold harmless the City in all matters where claims of liability against the City arise out of, relate to, are attributable to, are passive or derivative of, or vicarious to the negligent, intentional, or wrongful acts or omissions of Ever-Green, including but not limited to the failure to supervise, breach of warranty, the failure to warn, the failure to prevent such act or omission by Ever-Green, its employees, or its agents, and any other source of liability. Said obligations to defend, indemnify, and hold harmless shall be triggered upon the assertion of a claim for damages against City. On ten days' written notice from the City of Duluth, Ever-Green shall appear and defend all lawsuits against the City of Duluth growing out of such injuries or damages. Ever-Green shall not be required to indemnify City for amounts found by a fact finder to have arisen out of the intentional, willful, or wanton acts or omission of the City. This Section, in its entirety, shall survive the termination of this Agreement if any amount of work has been performed by Ever-Green. Nothing in this provision shall affect the limitations of liability of the City as set forth in Minnesota Statutes Chapter 466.
- 15.1.2. Ever-Green understands this provision may affect its rights and may shift liability and specifically agrees to the same. City shall indemnify Ever-Green for all known or unknown adverse environmental conditions which constitute a violation of any environmental law or laws or regulations with regard to pollutants or hazardous or dangerous substances, which Ever-Green establish existed on the property occupied by the System prior to the Effective Date of this Agreement.

16. INSURANCE

- 16.1. Ever-Green shall comply with the following insurance obligations and shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota:
- 16.1.1. Workers' compensation insurance in accordance with the laws of the State of Minnesota.
- 16.1.2. Commercial General and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance. Such insurance 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" provision may be utilized to meet the required minimum amount stated above. Such insurance shall indemnify Ever-Green and City from all liability described in the Indemnification paragraphs above.

- 16.1.3. City of Duluth shall always be named as Additional Insured under the Commercial General, and Automobile Liability Policies
- 16.1.4. Insurance covering professional liability and design and engineering services provided by Ever-Green or any contractor or subcontractor of Ever-Green with per claim and aggregate limits of not less than \$2,000,000.
- 16.1.5. At City's sole option and subject to the commercial availability of insurance coverage requested by City under this paragraph, comprehensive property insurance covering the System that includes the necessary coverage, limitations, and endorsements set forth in a written request for coverage from the CA.

Ever-Green shall provide Certificate of Insurance evidencing all coverages required above. Such Certificate shall contain an unconditional requirement that the insurer must notify the City without fail not less than 30-days prior to any cancellation, or 10 days prior to any non-renewal of the policy or coverages evidenced by said certificate, and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against the City. The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms – 1) ISO Additional Insured Endorsement (CG 2010 pre-2004); and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.

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

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

17. NON-ASSIGNMENT

- 17.1. The parties hereto acknowledge that City is relying upon the qualifications and identify of Ever-Green to operate the System and property related thereto. Therefore, except as otherwise approved by this Agreement, Ever-Green 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 Ever-Green will not make or create or suffer to be made any such transfer of Ever-Green's rights hereunder without the prior approval of the CA.

18. CIVIL RIGHTS ASSURANCES

- 18.1. Ever-Green, for itself and its officers, agents, servants and employees as part of the consideration under this Agreement, does hereby covenant and agree that:
 - 18.1.1. 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.
 - 18.1.2. 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.

19. DEFAULTS AND REMEDIES THEREFORE

- 19.1. General Defaults and Remedies
 - 19.1.1. General Events of Default by Ever-Green
 - 19.1.1.1. The following shall be deemed to be general events of default by Ever-Green under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable as otherwise set forth in this Agreement.
 - 19.1.1.2. Ever-Green shall fail to pay any payment due to City under this Agreement within ten (10) days of the date said payment is due provided City provides written notice of intent to implement this provision at least five (5) business days in advance.
 - 19.1.1.3. Ever-Green shall fail to observe or perform any of the other terms, conditions, covenants or agreements required to be observed or performed by it or any successors or assigns of Ever-Green pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after City has, pursuant to the provisions of this Agreement, given written notice to Ever-Green of such default or, in the event that such default shall be incapable of cure during said thirty (30)-day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.
 - 19.1.1.4. Ever-Green makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency as made as to Ever-Green or its business; or Ever-Green files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similarly under any present or future bankruptcy or insolvency statute, law or regulation; or Ever-Green files an answer admitting to or not contesting to the material allegations of a petition filed against in such proceeding or fails to have dismissed or vacated within thirty (30) days after its filing such a petition or seeks or consents or acquiesces in the appointment of

any trustee, receiver or liquidator of a material part of Ever-Green's properties or fails to have dismissed or vacated within thirty (30) days after the appointment without the consent or acquiescence of Ever-Green of any trustee, receiver or liquidator of any material part of Ever-Green's properties.

19.1.2. City's Remedies

19.1.2.1. Except as otherwise set forth in this Agreement, City shall have the following remedies in the event of a default by Ever-Green:

19.1.2.2. Terminate this Agreement and, at its discretion, assume management and operating responsibility of the System from Ever-Green.

19.1.2.3. Seek and be entitled to monetary damages from Ever-Green for any damages incurred by City as a direct result of Ever-Green's default.

19.1.2.4. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Ever-Green's violation of the terms and conditions of this Agreement or to compel Ever-Green's performance of its obligations hereunder.

19.1.2.5. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

19.1.3. General Events of Default by City The following shall be deemed to be general events of default by City under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 4 below shall be applicable as otherwise set forth in this Agreement.

19.1.3.1. City shall fail to pay any payment due to Ever-Green under this Agreement within ten (10) days of the date said payment is due provided Ever-Green provides written notice of intent to implement this provision at least five (5) business days in advance.

19.1.3.2. City shall fail to observe or perform any of the other terms, conditions, covenants or agreements required to be observed or performed by it or any successors or assigns of City pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after Ever-Green has, pursuant to the provisions of this Agreement, given written notice to City of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.

19.1.4. Ever-Green's Remedies Except as otherwise set forth in this Agreement, Ever-Green shall have the following remedies in the event of a default by City:

19.1.4.1. Terminate this Agreement.

19.1.4.2. Seek and be entitled to monetary damages from City for any damages incurred by Ever-Green as a result of City's default.

19.1.4.3. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent City's violation of the terms and conditions of this Agreement or to compel City's performance of its obligations hereunder.

19.1.4.4. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to Ever-Green.

19.2. Non-Waiver

19.2.1. The waiver by City of any default on the part of Ever-Green or the failure of City to declare default on the part of Ever-Green of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of Ever-Green of the same or of any other obligation of Ever-Green hereunder. And, to be effective, any waiver of any default by Ever-Green hereunder shall be in writing by City.

19.2.2. The waiver by Ever-Green of any default on the part of the City or the failure of Ever-Green to declare default on the part of the City of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of City of the same or of any other obligation of City hereunder. And, to be effective, any waiver of any default by City hereunder shall be in writing by Ever-Green.

20. REMEDIES CUMULATIVE

20.1. Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

21. ATTORNEY'S FEES

21.1. Unless stated otherwise herein, including but not limited to Section 15, above, each party hereto shall be responsible for all of its costs for any litigation arising under or related to this Agreement including but not limited to attorney's fees and costs and other expenses related thereto.

22. RULES AND REGULATIONS

22.1. Ever-Green agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and City and their respective agencies which are applicable to its activities under this Agreement.

23. NOTICES

23.1. Notice to City or Ever-Green provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time:

City:
City of Duluth
411 W. 1st Street, Room 422
Duluth, MN 55802
Attn: City Administrator

Ever-Green:
Ever-Green Energy, Inc.
345 St. Peter Street
Saint Paul, MN 55102
Attn: General Counsel

24. APPLICABLE LAW

24.1. 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.

25. SEVERABILITY

25.1. In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

26. FORCE MAJEURE

26.1. If, because of force majeure, either party shall be unable to carry out any of its obligations under this Agreement, then the obligations of that party shall be suspended to the extent made necessary by such force majeure. The party affected by force majeure shall give notice to the other party as promptly as practicable of the nature and probable duration of such force majeure. The term "force majeure" shall mean acts of God, legislation or lawful regulations of any governmental body; court orders; acts of public enemy; sabotage; riots; strikes; labor disputes; labor or material shortages; fires; explosions; floods; breakdowns or damage to plants; equipment, or facilities; interruptions in transportation or embargoes; inability to secure fuel or electric power or other causes of a similar nature which wholly or partially prevents the delivery of energy service from the system. City and Ever-Green shall use all reasonable means of avoiding the consequences of any of the foregoing. City shall pay such costs or expenses which Ever-Green incurs pursuant to this Agreement during force majeure that cannot be mitigated.

27. ENTIRE AGREEMENT

27.1. It is understood and agreed that the entire agreement of the parties 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.

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

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

CITY OF DULUTH, MINNESOTA

EVER-GREEN ENERGY, INC.

By _____
Mayor

By _____
CEO, President

Dated: _____

Attest

City Clerk

Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

Exhibit A

Position	Union Status
General Manager (vacant)	Non-Union
Operations Manager	Non-Union
Office Manager	Non-Union
Senior Project & Account Manager/Engineer	Non-Union
Working Foreman - Production	Union
Operating Watch Engineer	Union
Operating Watch Engineer	Union
Operating Watch Engineer	Union
Operating Watch Engineer	Union
Assistant Watch Engineer	Union
Assistant Watch Engineer	Union
Assistant Watch Engineer	Union
Assistant Watch Engineer	Union
Assistant Watch Engineer-Relief	Union
Assistant Watch Engineer-Relief	Union
Assistant Watch Engineer-Relief	Union
Production Mechanic 3	Union
Working Foreman-Distribution	Union
Distribution Technician 2	Union
Distribution Technician 2	Union

Exhibit B

Reimbursable Expenses

- Salaries and Wages for employees directly engaged in providing Management Services, excluding company's senior management (SVP and above).
- Employer Payroll Taxes (FICA, Medicare, etc.)
- Payroll and Benefit Administrative Fees
- Unemployment Taxes
- Sales or other taxes associated with reimbursable amounts if applicable.
- Workers Compensation Taxes
- Employee Fringe Benefits (Health, Dental, Life, Vacation, Sick, Disability, Retirement, Severance, Expense Allowances, etc.)
- Employee Uniforms and PPE
- Office Supplies
- Operating Supplies
- Audit Fees
- Employee Medical and Drug Testing Fees
- Professional Services and Consulting Fees
- Postage or other Delivery Fees
- Travel-for operating staff and operating support excluding senior management
- Education
- Advertising
- Freight Charges
- Office Equipment Repair
- Dues and Subscriptions
- Permits and Licenses
- Insurance
- Phone, Network and Internet
- Computers, Devices and Software
- Other Miscellaneous Expenses

Exhibit C

Ever-Green shall update and present, as requested by the City, a comprehensive five (5)-year plan (the “Plan”) that describes the planned and potential operational, financial, and development opportunities for the System. The Plan shall serve as a strategic roadmap and include the following integrated components:

- A Financial Five-Year Plan, including detailed operating budgets, long-term rate planning, and financial projections aimed at ensuring the long-term sustainability and affordability of the System;
- An Operating Plan outlining key operational initiatives and performance improvements;
- A Strategic Capital Plan identifying and prioritizing capital investments necessary to support system reliability, efficiency, and growth;
- A Five-Year Customer Plan analyzing existing customer needs, anticipated demand, service expansion opportunities, and customer engagement strategies.

During the preparation of the Plan, Ever-Green will periodically update and seek input on the Plan from the System Advisory Panel and CA.

Recommendations included in the Plan for the System should consider customer impacts and the impacts to System reliability, and the affordability and competitiveness of the services provided by the System.

PURCHASING MADE SIMPLE (for Duluth Energy Systems ONLY)

Revised 10/10/2025

This document identifies purchasing requirements for Duluth Energy Systems (DES) and its management company, Ever-Green Energy.

1. Contacts

Main Purchasing line: 218-730-5340, purchasing@duluthmn.gov

Purchasing Agent (Patti): 218-730-5002, pstalvig@duluthmn.gov

Buyer (Mike): 218-730-5003, mwolf@duluthmn.gov

Buyer (Serina): 218-730-5004, ssprecco@duluthmn.gov

Accounts Payable: 218-730-5350, accountspayable@duluthmn.gov

Finance Office Coordinator (Deb): 218-730-5033, daparker@duluthmn.gov

2. Definitions

Agreement/Contract – A written record of the terms and conditions of an arrangement between the City and another party that involves mutual obligations and an exchange of consideration (usually money).

Bid/Quote – The firm price that a supplier agrees to charge for a good or service.

Contractual Service – The purchase, including rental, of equipment, or the construction, alteration, repair, or maintenance of real property.

Emergency – An (1) actual or apparent situation (2) arising from sudden/unforeseeable circumstances (3) that requires immediate action to safeguard the life, health, or property of the City, its residents and/or visitors, and/or DES or its customers. Under Section 41-27, the City's Administrator and Purchasing Agent are solely responsible for determining the existence of an actual or apparent emergency.

Professional Services – Defined in MN Statue 16C.08 as those services that are intellectual in character, including consultation, analysis, evaluation, prediction, planning, programming, or recommendation. They do not include the provision of supplies or materials, except as approved by the City Purchasing Agent or as incidental to the provision of such services.

Proposal – A document submitted by a vendor that details the goods/services that they will provide along with a proposed fee.

Purchase Order (PO) – A document issued by Purchasing to a supplier that details the supplies requested, price, delivery location, due date, and other terms related to the transaction.

Requisition (RQ) – The form required to purchase and encumber funds for any goods, materials, supplies or services with an estimated cost exceeding \$25,000. An RQ must be submitted on the template prepared by the Purchasing Agent with all required information (e.g., details regarding the supply/service, estimated cost, delivery address, funding source, need-by date, etc.) and attachments (e.g., copies of all requested quotes or sole source justification) included.

Requestor Invitation for Bid - The required formal, sealed process for purchasing goods and non-professional contractual services with an estimated cost of \$150,000 or more used for soliciting vendor information/pricing and identifying the lowest responsible bidder.

Request for Quote - The required simplified, unsealed process for purchasing goods and non-professional contractual services with an estimated cost exceeding \$25,000 and less than \$150,000 (and otherwise recommended for estimated purchases of \$25,000 or less) used to select the lowest responsible vendor based on a minimum of two quotes.

Request for Proposal (RFP) – The process for soliciting vendor proposals for professional services and other complex purchases exceeding an estimated cost of \$50,000 (and otherwise as directed by the City Purchasing agent) where factors other than cost need to be considered or standard specifications cannot be provided.

Sole Source – A restricted procurement method used for the limited purpose of purchasing supplies or services that only one vendor can provide(e.g. OEM parts).

Unauthorized Purchase Form – The form that must be submitted to the Purchasing Agent that includes an explanation/justification for any purchases that are not made in compliance with this policy, the Duluth City Code and/or Charter, and/or any other applicable requirements in federal, state, or local laws or regulations.

3. General

The purchase of services and supplies for DES is governed by this policy, the DES Management Agreement (City Contract No. XXX), the Duluth City Code and Charter (including but not limited to Chapter 41 of the City of Duluth Legislative Code), and applicable state municipal contracting laws (including but not limited to Minnesota State Statute 471.345). For purchases funded in whole or in part with federal funds, federal procurement regulations must also be followed (2 CFR 200.318 – 200.327). Important general principles governing DES contracts and purchases with City funds (either directly or via reimbursement) include:

- Any purchase or contract for goods, materials, supplies, or services must serve a public purpose.
- City Departments, including DES, must avoid purchasing unnecessary or duplicate items.
- When considering a purchase, DES should consider items that may be available through state or federal surplus.
- For purchases of \$25,000, DES is required to contact Purchasing to review state contracts.

In addition, for on-site construction projects, any work amounting to \$2,000 or more is

required to pay the minimum of state prevailing wages. For more details, please consult Section 2-26 of the City Code.

4. Authorized Purchases

. Duluth Energy Systems has been granted authority through this Agreement to make purchases up to \$25,000. All other purchases must be requested through the City of Duluth Purchasing Office. Notice to proceed for contracts and purchase orders above \$25,000 will only be issued after all approvals are received, except for emergency purchases (as defined herein). Based on the City Purchasing Agent's review of the Unauthorized Purchase Form and their reasonable professional judgment, the City Purchasing Agent is responsible for determining whether to issue or withhold City payment for each unauthorized purchase and retaining Unauthorized Payment Forms/related documentation for City audit purposes.

5. Purchasing Thresholds

Below is a table summarizing purchasing thresholds and the requirements associated with each. Additional information is provided in the paragraphs below the tables.

Thresholds for Goods and Non-Professional Services

Dollar Amount	RQ?	Method	Requirements	Authorization	Contract Required?	City Council Approval?
\$25,000 or less	No	DES method	Open Market or 2 quotes	DES	No	No
\$25,000.01 to \$149,999.99	Yes	Purchase Order	Direct Negotiation; 2 quotes needed	Purchasing Agent	Yes	No**
\$150,000.00 and up	Yes	Purchase Order	Publicly posted sealed bid	Purchasing Agent	Yes	Yes

**** Note that purchases over \$50,000 which are either sole source purchases or solicited and received only one responsive bid must be approved by City Council**

Thresholds for Professional Services

Dollar Amount	RQ?	Method	Requirements	Authorization	Contract Required?	City Council Approval?
\$25K or less	No	DES method	Informal proposals**	DES	No	No
\$25,000.01 to \$50K*	Yes	Services Agreement (PO created)	Informal proposals**	Purchasing Agent	Yes	No
\$50,000.01 and over	Yes	Services Agreement (PO created)	Request for Proposals**	Purchasing Agent	Yes	Yes

***If professional services are secured for design of something to be built, an agreement is required for anything over \$10,000.**

****In most cases, a competitive process is not required for professional services; however, in the interest of promoting fair and open competition, a request for proposal process is encouraged when possible. Some funding sources require a competitive process.**

6. Goods and Non-Professional Services

a. Purchases of \$0.01-\$25,000

Purchases of \$25,000 and less may be made using DES methods. As with any purchase, it must serve a public purpose and be budgeted.

Purchases cannot be split and/or spaced within 60 days to avoid the single transaction limit or purchasing threshold limits.

b. Purchases of \$25,000.01 and over

Any purchase over \$25,000 requires a requisition be submitted to the City Purchasing Office. The Requester must complete a requisition (RQ) form, attaching any additional information such as quotes, specifications, delivery instructions, etc., and route the RQ for approval. It is recommended to have Purchasing review requisitions prior to sending for approvals. The employee's supervisor and the Public Works and Utilities Department Director must approve all RQs. Other approvals may be required depending on the funding source.

Sealed bid solicitations for many goods and non-professional services will be advertised using a third-party website – www.bidexpress.com.

Public bid openings are live-streamed from the Purchasing Office immediately after bids are due (usually 2:00 PM). Award will be made to the lowest responsible bidder. Total life cycle cost must be taken into account when determining the lowest bid.

All purchases of \$150,000 or more require City Council approval.

7. Specifications

When requesting bids or quotes, specifications must be included that provide a clear and accurate description of the technical requirements of the supply or service that we are requesting. Specifications need to be detailed, but generic enough to allow for fair competition. The emphasis should be on stating the minimum essential characteristics and standards that the supply or service must conform to for the intended use, rather than detailed product specifications. We cannot require a brand name, but can use a brand name description as a means of defining the required characteristics, as long as an equivalent product will be considered.

8. Professional Services

a. \$Up to 25,000.

Can be awarded without the bid/quote process; selection is based on DES discretion.

A professional services agreement, insurance certificate, proposal and rate sheet is required for any design services of \$10,000 or more.

b. \$25,000.01 and up

A requisition is required to be submitted to Purchasing. Agreements over \$50,000 require City Council approval.

9. Federally and Grant-Funded Projects

Federally and grant-funded projects often have additional requirements, which may include longer minimum public posting times for bids, lower thresholds for sealed bids, additional contract terms, and other requirements. Regulations for federally funded projects can be found in 2 CFR 200.318 through 200.326, and in specific federal agency regulations. Here are some sample differences for federally funded projects:

- All services, including architectural and engineering, require a Request for Proposal process.
- A cost or price analysis must be completed for every purchase that meets or exceeds the Simplified Acquisition Threshold (currently \$250K).

Requesters should notify Purchasing that the requisition is against federal or grant funds and provide a copy of the funding documents, so Purchasing can review the requirements for that particular funding source and make the appropriate adjustments to the solicitation and contract documents.

10. Request for Proposals

A Request for Proposal (RFP) process is used when we want to purchase professional services or a combination of professional services and supplies and award based on factors other than primarily price, and/or exact specifications cannot be provided. An example would be the purchase of a new software system; where we can tell prospective proposers what we want the software to do or what problem we are trying to solve, but we want the proposers to tell us all of the features and functionality of their respective programs, the method that they would use to implement it, training that they will provide, support, and other services in addition to costs.

An RFP boilerplate is available that contains standard language that should be included. Evaluation criteria for the proposals must be determined before the RFP is issued. Examples of evaluation criteria are things like the qualifications and experience of the company and the staff proposed to work on the project, the proposed work plan, timelines, training, and cost. The evaluation criteria must be listed in the RFP and assigned a percentage rating so the proposers are aware of the relative importance of each of the criteria.

An evaluation team will review the proposals that are received and score them in accordance with the identified criteria. Proposers can be asked to provide presentations or demonstrations to support their proposals and aid in the evaluation process. Technical proposals should be reviewed and scored before the costs are reviewed. Cost scores are assigned using a formula where the lowest cost proposal receives the maximum points available.

Once all of the proposals have been reviewed, the proposal with the highest score will be recommended for award by submitting a resolution to City Council. A professional services agreement will be executed once approved.

11. Insurance Certificates

A certificate of insurance is required for all construction projects, professional services, and any time that a contractor or vendor is performing work on City or DES property.

The basic requirement is \$1.5 million each for general commercial liability and auto liability with the City and DES management company named as an additional insured. For professional services, \$1.5 million in professional service liability is required.

Prospective bidders must be made aware of the City's standard insurance requirements at the time that quotes are requested, otherwise the quote is invalid and updated quotes will be required from all bidders.

12. Contractual Services & Construction Contracts

A formal signed contract is required for contractual services or any construction projects of \$25,000 and over.

Time and materials contracts may only be used if no other contract type is suitable and must include a maximum cost that the contractor exceeds at its own risk.

13. Professional Service Agreements

Required for all professional services of more than \$25,000 and all design services of more than \$10,000.

A copy of the insurance certificate, proposal and rate sheet will be required.

Four standard form agreements are available:

- Professional Services Agreement (Consultant) – used for studies and other professional services that will not result in hard construction documents.
- Engineering Agreement – used for engineering services, including design; plans; bidding documents; construction survey and inspection etc.
- Architectural Agreement – used for architectural services including design, plans, bidding documents, construction survey and inspection etc.
- Landscape Architect Agreement – used for landscape architect services including design, public input, plans, bidding documents, construction survey and administration, and inspection, etc.

14. Amendments and Change Orders

Contracts and agreements can only be modified by an approved change order or an amendment. For contracts and agreements that are set up with a maximum not-to-exceed price, it is the Project Manager's responsibility to control the contractor/consultant and minimize contract changes. Amendments and change orders should only be issued when unexpected situations are encountered.

Changes to a construction contract must be made with a change order. For contracts under \$150,000, if the new contract total after the change order is going to meet or exceed \$150,000, then it must be approved by City Council. If not, then it needs to be signed by the contractor, Department Head, Purchasing Agent and Auditor. An RQ must be submitted to encumber the additional funds.

For construction contracts that were initially \$150,000 or more and approved by City Council, another approval is not needed unless the change order(s) causes the contract total to increase by more than 25% of the original contract amount. An RQ must be submitted to encumber the additional funds.

Changes to Professional Service Agreements require an amendment. If the original agreement was under the \$50,000 threshold and was not approved by City Council, and the amendment will add money to the agreement that puts it over the \$50,000 threshold, then the amendment must be approved by City Council. Council must approve every amendment to agreements over \$50,000. There is no 25% "allowance." As with the other changes, an RQ must be submitted to encumber the additional funds.

15. Sole Source and Single Source Purchases

Sole source purchases are ones where only one vendor can supply the part or service. Single source purchases are those where the supply or service may be available from more than one vendor, however we want to purchase from one particular vendor for a valid reason such as the need to match existing equipment, timeliness of delivery, etc. The terms "sole source" and "single source" are sometimes used interchangeably.

Sole/single source purchases must be justified and approved by the Department Head. Attaching the justification to an approved requisition satisfies this requirement. All sole/single source purchases over \$50K must be approved by City Council.

16. Emergency Purchases

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In an emergency, contact two vendors for quotes if possible. Notify Purchasing within 24 hours of the incident with a detailed explanation of the situation, the reason for the purchase, and the action taken. The Purchasing Agent is required to write a justification which is then signed by the CAO and filed with City Council.

Urgent purchases do not meet the criteria of emergency purchases. Government procurement is based on competition, so when in doubt, get multiple quotes.