

Memorandum

To: Doug Hasler
School Board

From: David Spooner 

Date: August 10, 2017

Re: Approval of Agreement with Duluth Energy Systems (Duluth Steam – City of Duluth)

Since 1995, the District has been connected to City Steam serving the Historic Old Central High School Building. There was an agreement made at that time which continued to auto renew. With the change in operation status from the Duluth Steam Cooperative to Duluth Energy Systems, the new operator has requested updated agreements for continued service.

City Steam has been a reliable and efficient source of heat for this building, and the attached agreement has been reviewed by District Administration, Mark Knutson, the District's legal counsel, and edits to the Agreement document have been negotiated.

This agreement may look familiar, as it was inadvertently brought forth and approved last September. However that specific agreement was in draft format and not finalized.

Recommendation:

I recommend the Duluth School Board approve entering into an agreement with Duluth Energy Systems to procure steam service for the Historic Old Central High School.

Attachment



STEAM SERVICE AGREEMENT

THIS DULUTH ENERGY SYSTEMS STEAM SERVICE AGREEMENT

("Agreement") is entered into as of _____, 2017 ("Effective Date"), by and between Ever-Green Energy, Inc., as manager for the City of Duluth, and on behalf of its agents, successors and assigns (collectively, the "Supplier"), and the following:

CUSTOMER:

Independent School District #709 - City of Duluth Public Schools

ADDRESS WHERE STEAM SERVICE IS TO BE PROVIDED:

Historic Old Central High School
215 N. First Ave East Duluth, MN 55802

BILLING ADDRESS:

Historic Old Central High School
c/o ISD #709
Attn: Accounts Payable
215 North 1st Ave East
Duluth, MN 55802

CUSTOMER CONTACT INFORMATION:

Name: David Spooner
Title: Manager of Facilities - Duluth Public Schools
Telephone: 218-336-8700
eMail: David.Spooner@isd709.org

EXHIBITS:

- A. Easement
- B. Equipment Ownership and Maintenance Responsibility Schematics
- C. Connection Standards
- D. Rate Calculation Methodology & 2016 Capacity Charge Rates
- E. Definitions

ARTICLE I
CUSTOMER PURCHASE

1.1 The undersigned, whether one or more persons or entities or any combination thereof, all of which shall collectively be referred to herein as the “Customer”, is the owner of certain real properties legally described as: Duluth Proper 1st Division East 3rd Street Lots 2 thru 22 Even Numbered Lots hereafter referred to as the “Premises”. Supplier and Customer are parties “Parties” to this agreement “Agreement”. Supplier has installed or is in the process of installing the necessary District Energy System components required “District Energy System” to provide the Premises with High Pressure Steam ”HP Steam” for heating and other proposed purposes in the Premises “Steam Service”. Customer hereby agrees to be connected to the District Energy System and to pay for all HP Steam delivered to the Premises.

- (a) Payment obligations for any HP Steam provided may be assigned by Customer from time to time to its tenant or tenants of the Premises, but Customer agrees that it is and shall remain responsible for all Customer obligations as set forth herein and for all undisputed amounts due and owing hereunder.

1.2 Customer, in consideration of Supplier making HP Steam available to the Premises grant to Supplier, a permanent easement, Exhibit A, for the purposes of installing, operating, and maintaining the District Energy System in the Premises, and the right to extend and maintain the District Energy System through said Premises to serve other buildings.

1.3 Customer hereby grants Supplier reasonable free and unobstructed entry into the Premises for the purposes of reading Supplier’s Meters, and for maintaining the District Energy System and those components of the Premises Heating System for which Supplier has maintenance responsibility. The party to which maintenance responsibility falls for various components of the District Energy System and the Premises Heating Systems is indicated on Exhibit B. The delineation point between the Supplier-owned District Energy System and the Customer-owned Premises Heating System is located at the outlet of the Supplier’s HP Steam First Shut-off Valve in each Premise. The Meters installed in Customer’s Premises are also owned by Supplier and are components of the District Energy System. For the purposes of clarity, Supplier and Customer acknowledge and agree that the District Energy System is separate from and does not include Premises Heating System equipment.

1.4 Supplier and Customer agree that Steam Service provided under this agreement shall commence on December 1, 2017 (“Commencement Date”). The term of this Agreement shall, unless terminated as provided herein, continue until December 31, 2027 (“Initial Term”).

- (a) Upon completion of the Initial Term, this Agreement shall continue for successive three (3) year terms (the Initial Term and any subsequent terms occurring hereunder shall collectively be referred to as the “Term, unless

Customer gives written notice to Supplier at least 180 days before the start of the upcoming successive term, that Customer does not elect to continue this Agreement for that upcoming successive term.”

- (b) At the end of the Term (Initial Term or any number of renewal terms), Supplier agrees to repair any damage to Premises caused by Supplier’s exercise of its rights hereunder, to the extent practical, with reasonable wear and tear excepted.

1.5 Supplier hereby agrees as follows:

- (a) To limit Customer’s share of Connection Charges, as defined in Article V, to zero dollars (\$0.00).
- (b) To provide, at no cost to Customer, maintenance and repairs to the First Shut-Off Valves and any high pressure steam traps, valves or other District Energy System equipment installed in the Premises before (upstream of) the First Shut-Off Valves.

1.6 Customer hereby agrees as follows:

- (a) To accept HP Steam at the Premises and pay for such Steam Service in accordance with the terms detailed herein;
- (b) That unless otherwise negotiated at a later date, Customer shall, for the Initial Term and all applicable renewal term(s), use Supplier exclusively as its provider for Premises heat and domestic water heating. However, if Supplier defaults in providing steam at times that are critical to Customer in order to protect Customer’s property and in order to assure that there are not substantial interruptions to Customer’s operations, then Customer can use other sources of steam or other heat and domestic hot water heating for the period of the interruption and until service is restored.
- (c) That the amount paid for Steam Service is based on a rate structure established by the Supplier and approved by the City Council, the two major components of which are a Capacity Charge and a Consumption Charge, as specified in Article V. The approved Rate Calculation Methodology and associated Capacity Charge Rates as of the Effective Date of this Agreement are provided as Exhibit D.
- (d) That Supplier’s District Energy System Connection Standards (Exhibit C) have been provided to Customer. Connection Standards represent Supplier’s recommendations and best practices. Connection Standards and, or, revisions to Connection Standards shall not apply to Customer retroactively.
- (g) That Customer shall retain ownership of the Premises Heating System and agrees that Supplier shall not be liable to Customer for damage caused by, or

resulting from the malfunction or failure of any Premises Heating System component within the Customer's Premises except to the extent arising from Supplier's (or Supplier's agents, employees, contractors or other persons for whom Supplier is responsible), negligent acts, omissions or misconduct or breach of the contract by Supplier;

- (h) That should Supplier modify the District Energy System to provide thermal energy in the form of hot water rather than HP Steam in and around the area of Customer's Premises:
 - (i) Supplier agrees to provide Customer one-hundred and eighty (180) days' notice of such change and, at that time, to provide Customer with an offer to enter into an amendment (Hot Water Amendment) to this Agreement accepting such hot water in place of HP Steam.
 - (ii) During the Term of this Agreement, Supplier agrees to continue to provide Customer HP Steam in accordance with this Agreement in the event Customer elects not to connect to Supplier's hot water distribution system.

1.7 Should Customer terminate Steam Service in Premises prior to the end of the Initial Term, except due to default of Supplier or pursuant to paragraph 1.8, Customer shall immediately be responsible for:

- (a) The Capacity Charge described in Article V through the end of the Initial Term, based on the then current means of calculating the Capacity Charge for the system.
- (b) All other undisputed amounts due and owing hereunder from Customer to Supplier.

1.8 The Customer may terminate this Agreement in the event it sells or otherwise transfers its interest in the Premises to an unrelated third party as long as the Customer meets the following conditions:

- (a) Provides written notice to Supplier within seven (7) days of entering into an agreement for the sale of the Premises;
- (b) Provides relevant information in the notice referenced above including but not limited to the prospective buyer's name and contact information;
- (c) Uses reasonable effort to facilitate introduction of the Supplier to the prospective buyer and assists Supplier in the transfer of service to buyer.
- (d) In the event the prospective buyer does not assume this Agreement or enter into a new Steam Service Agreement with Supplier prior to Customer's transfer of the Premises to a third party, Customer will be responsible for paying applicable

disconnection charges and Capacity Charge for the remainder of the then current calendar year.

1.9 Upon termination of Steam Service to Customer's Premises, the easement described in Section 1.2 of this Agreement and the reasonable right of access to the Premises discussed in Section 1.3 of this agreement shall continue for the purposes of maintenance, repair, operation or extension of District Energy System equipment if such equipment remains in Premises.

1.10 The parties hereto agree that this Article I and Exhibit A represent unique Customer characteristics and shall be controlling as they relate to Articles II-XII and to Exhibits B through E.

DULUTH ENERGY SYSTEMS STEAM SERVICE AGREEMENT

ARTICLE II TERM

2.1 The Initial Term of this Agreement commences on the Commencement Date, and continues for the period specified in Section 1.4 unless otherwise terminated according to the terms detailed herein below.

- (a) The Commencement Date shall be the date on which Customer first begins to consume District Energy System-provided HP Steam. If the Commencement Date occurs after the date specified in Section 1.4 due exclusively to Supplier delays. Customer shall not be billed for, and Supplier shall credit Customer the total of Capacity Charges which would have been due between the date specified in Section 1.4 and the date District Energy System-provided HP Steam was first available for consumption by Customer. In this circumstance, the Initial Term end date shall not change from that specified in Section 1.4.

ARTICLE III CONNECTION TO SYSTEM

3.1 The District Energy System shall remain the personal property of Supplier and shall not be deemed a fixture of the Premises, and the Premises Heating System shall remain the personal property of Customer and shall not be deemed a part of the District Energy System.

3.2 Customer shall provide a safe and secure space within the Premises that is reasonable and appropriate for the installation, inspection, testing, repair maintenance, operation, replacement and removal of the District Energy System.

3.3 Except as otherwise specified in Article I of this Agreement, Customer shall be responsible for maintaining the Premises Heating System during the term of this Agreement, at Customer's sole cost and expense, provided, however, that if the Premises Heating System is damaged or destroyed as a result of negligent acts or omissions or willful misconduct or breach of contract of Supplier or its agents, employees, contractors or other persons for whom Supplier is responsible, then Supplier shall be liable for the cost of the required repairs or replacements. If such Supplier-responsible damage or destruction of Premises Heating System prevents customer from consuming Supplier-provided HP Steam, Customer shall not be billed for total of Capacity Charges and Consumption Charges which would have been due Supplier between the date the Premises Heating System was disabled and the date it was restored and made capable of consuming Supplier-provided HP Steam.

3.4 Unless otherwise stipulated in Article I, Customer will furnish the following at the Customer's sole expense:

- (a) One or more main hand control valves by which HP Steam may be shut off from all parts of the Customer's Premises Heating System internal to the Premises. Such valve(s) shall be installed after (downstream of) the Supplier's First Shut-off Valve.
- (b) Proper piping to permit the installation of Supplier-owned and installed Meter.
- (c) Any necessary pressure reducing valve(s) and accessories required to reduce the pressure carried in Supplier's District Energy System to that pressure required by Customer's Premises Heating System or other steam energized equipment.

Note: Any such Premises Heating System valves, piping, or other steam components installed upstream (on the high pressure side) of the reducing valve(s) shall be designed and rated for (saturated) steam at an operating pressure of at least 250 pounds per square inch (psi).

- (d) Properly sized and configured safety valve(s) and safety valve vent piping.
- (e) A sewer connection or other means of disposing of condensate, appropriately designed to provide Supplier's Condensate Meter a free flowing discharge.

3.5 Unless otherwise specified in Article I and Exhibit B, all piping and other equipment between Supplier's First Shut-off Valve and the condensate drain into the sewer connection, with the exception of Supplier's Meter, shall be installed, owned and maintained by the Customer. Supplier shall not be liable for any damages resulting from any failure of such equipment, or of any other part of the Customer's Premises Heating System installation, except if such damage is a result of Supplier's negligent acts or omissions or willful misconduct of Supplier, its agents, employees, contractors or other persons for whom Supplier is responsible. All equipment between and including the

Supplier's plant(s) and the First Shut-off Valve; and all Meters located in, on or around the Premises, shall be the installed, maintained and owned by Supplier as depicted in Exhibit B.

3.6 The Customer shall promptly notify Supplier of any leaks known to Customer within Customer's Premises. Customer agrees that it remains responsible for payment of applicable Consumption Charges for all HP Steam consumed on the Premises, unless there is a leak or loss of steam or condensate that is not attributable to the actions of Customer or does not emanate from Customer's Premises Heating System. Customer shall not be responsible for such leak or loss of condensate from Premises Heating System attributable to negligent acts or omissions or willful misconduct or breach of contract of Supplier or its agents, employees, contractors, or other persons for whom Supplier is responsible, or for leaks or losses from Supplier's District Energy System.

3.7 Supplier may, at reasonable times, inspect the Customer's Premises Heating System installation, and shall provide Customer with notice of any repairs or modifications noted by Supplier for which Customer is responsible which are necessary to conform to applicable federal, state or local codes, rules or regulations ("Code") or the requirements of Supplier's Connections Standards. Supplier shall not be held responsible or liable for issues caused by such deficiencies in Customer's Premises Heating System which Supplier does not detect or report to Customer. Undisputed repairs or modifications necessary to prevent imminent harm to persons or property shall be completed in an expedient manner by Supplier to correct District Energy System or Premises Heating System issues for which Supplier is responsible, or by Customer to correct Premises Heating System issues for which Customer is responsible.

ARTICLE IV **DISTRICT ENERGY SYSTEM**

4.1 "District Energy System" shall mean all production and distribution equipment, facilities, materials, and any other type of property now or hereafter owned, operated, or controlled by Supplier for the purpose of or incidental or useful to producing, distributing, receiving, collecting, monitoring and metering steam, excluding any part of any Customer's Premises Heating System.

4.2 All property constituting a part of the District Energy System in, on or around the Premises, shall at all times be the property of Supplier, and upon the earlier of termination or expiration of this Agreement and any extension or amendments hereto, Supplier shall have the right at its option to remove such property from the Premises as provided in 1.4(b);

- (a) Supplier shall inform Customer of its intention to remove the property from the Premises within thirty (30) days after the earlier of the termination or expiration of this Agreement, or such property shall become the property of Customer. If Supplier shall elect to cause the removal of its property (and thus, also restoration of Customer's Premises), it shall do so within sixty

(60) days following the date of notice of its intention to remove such property unless any delay in such removal is caused by or is the result of any obstruction or interference caused by Customer.

- (b) Customer shall have the right to demand that Supplier remove its property from the Premises at the end of this Agreement if Supplier does not elect to do so on its own. Customer can make such a demand to remove Supplier's property at any time and Supplier shall remove its property from the Premises within 180 days of the date of Customer's demand, or within 180 days after the end of this Agreement, whichever is later. However, if Supplier has extended its system to serve other buildings, Supplier shall be entitled to keep such property in the Premises as is necessary to serve those other buildings.
- (c) Any removal by Supplier of any System equipment following the termination or expiration of this Agreement shall not affect or otherwise modify Supplier's right to keep and maintain its rights of access created hereunder in, on or around premises for any remaining equipment. Customer agrees Supplier shall have the right to extend and maintain its system through Premises to serve other buildings. Supplier agrees that it will take the necessary steps to ensure that any such activity will not negatively impact Premises or Customer's intended use of Premises.

4.4 Commencing on the Effective Date of this Agreement, Supplier and its employees, agents, contractors and representatives shall have a non-exclusive right of reasonable access to and through the Premises, to the extent reasonably necessary for the convenient and efficient exercise and performance of Supplier's rights, duties and obligations under this Agreement, including the installation, testing, maintenance, operation, repair, replacement and removal of the District Energy System.

- (a) Neither Customer nor its agents, employees, tenants, customers, contractors or other persons under its control shall knowingly authorize or permit any person (other than a duly authorized employee or agent of Supplier) to operate, maintain, alter or otherwise have access to any component of the District Energy System or other property of Supplier located on, in or around the Premises without the consent of the Supplier, or to break or replace any seal or lock of Supplier, or to alter or interfere with the operation of the Meter or Supplier's connection, or any other equipment installed by Supplier in, on or around the Premises; **provided, however**, that if Customer reasonably believes that access to the aforementioned equipment or property is necessary to prevent imminent harm to persons or property, then such access shall be permissible if and only if Customer takes only those actions with respect to such equipment or property, as it believes are reasonably necessary to prevent said imminent harm and Supplier is promptly notified of such access and other action taken by Customer.

4.5 Supplier shall, at its own expense, replace the wear parts in all Meters with

calibrated parts as often as is necessary to ensure accurate HP Steam consumption measurement. Additional Meter calibration tests will be conducted by Supplier upon reasonable request by a Customer. Such additional tests shall be paid for by the Customer unless the Meter is found to register more than two and one-half percent (2.5%) high. Metering Equipment will be considered accurate if within two and one-half percent (2.5%) of actual measured flow. Supplier shall credit or charge the Customer's account for any amounts overbilled or under-billed as a result of Meter calibration issues or malfunctions, starting on the date the Meter began to malfunction (when it can be determined) or to the first billing cycle of the current calendar year, whichever is later. The parties hereto agree that all such Meters shall remain the property of the Supplier, and that the Supplier assumes all responsibility for the maintenance and operation of all such Meters.

4.6 If it is reasonably determined that a Meter has been knowingly or deliberately tampered with by Customer, its agents, employees, representatives or contractors, so as to avoid proper measurement, Supplier shall immediately notify Customer and provide Customer the opportunity to investigate the situation and take corrective actions which shall provide Supplier with reasonable assurance that further tampering will not occur. If such assurance is not provided within ten (10) business days after Customer has been notified of the issue, Supplier may discontinue service. In this case, Steam Service will not be restored until the metering deficiency has been corrected and Customer has paid, in full, the Supplier's reasonably estimated Consumption Charge for the amount of HP Steam consumed but not metered, plus any and all reasonable costs incurred by Supplier which are directly attributable to the tampering, and any and all reasonable costs expended by Supplier in such effort to determine the cause of and amount of any such deficiency. If Supplier discovers that the Meter was deliberately and/or willfully tampered with, and Customer had knowledge of such tampering and did not immediately report it to Supplier, Supplier may, at its discretion, elect not to restore the affected service.

4.7 Supplier may, whenever it determines it necessary to make repairs or extensions to the District Energy System, temporarily shut off the supply of HP Steam to any Customer provided a reasonable notice of such intention is given to the Customer, and that such repairs or extension are made with due diligence, and Supplier makes all commercially reasonable efforts to avoid any interruption, reduction or complete shut off of the supply of HP Steam during the normal business hours of the Premises. In such event, Supplier shall not be liable for any damage caused by, or resulting from, such suspension of Steam Service. Notice of shut off shall not be required, however, if the repairs are necessitated by unavoidable accident or risk of damage or harm to others in proximity to District Energy System happening beyond the control of Supplier. Notice to any party identified by Customer as being in charge of said Premises shall be deemed notice to the Customer for the purpose of this Article IV.

ARTICLE V
CHARGES AND ADJUSTMENTS

5.1 Customer shall pay the “Capacity Charge” for the HP Steam supplied to Premises. Unless otherwise specified in Article I, the monthly Capacity Charge shall be determined annually by Supplier according to policy approved by the Duluth City Council. The City Council approved policy in effect as of the Effective Date of this Agreement is provided as Exhibit D. The Capacity Charge reflects the anticipated fixed costs of Supplier incurred in supplying HP Steam to Customer on a monthly basis during the ensuing twelve month period.

- (a) Fixed costs used to determine the Capacity Charge include, but are not limited to, the amortized costs of acquiring, installing and constructing the District Energy System and financing costs related thereto, and projected maintenance and operational costs. The Capacity Charge is an annual charge , which shall be billed to Customer in twelve (12) equal consecutive monthly installments spread over the course of the ensuing calendar year, **provided, however**, that Customer may, at its sole discretion, elect to pay the Capacity Charge as determined hereunder in one lump sum on or before January 31 of any given year. The Capacity Charge shall be established by Supplier pursuant to this Agreement in each calendar year, with the first monthly payment of the Capacity Charge appearing on the January Invoice.
- (b) The Capacity Charge payable by Customer shall be based on Customer's projected HP Steam consumption in relation to the projected aggregate HP Steam consumption by all District Energy System customers. In the event Supplier connects new customers to the District Energy System which results in more than a five percent (5%) reduction in Customer’s Capacity Charge, the Supplier, shall re-determine the Capacity Charge payable by Customer as of the commencement of Steam Service to such other customers. The Capacity Charge, if adjusted as aforesaid, shall remain unchanged until it is adjusted again pursuant to the terms of this Article V. The Capacity Charge Rate Cap described in Article I of this Agreement shall remain in effect throughout the Term, even if the aggregate District Energy System consumption decreases sufficiently to have otherwise increased the Customer’s Capacity Charge beyond the Capacity Charge Rate Cap.
- (c) Unless otherwise stipulated in Article I, the Capacity Charge payable by Customer shall be recalculated annually each December for the ensuing twelve (12) month period based on the methodology approved by the Duluth City Council and as adjusted in this Agreement. The approved methodology as of the Effective Date of this Agreement is provided as Exhibit D.

5.2 Customer shall also pay to Supplier the monthly “Consumption Charge” for HP Steam actually provided to Customer during each month. The Consumption Charge rate shall be based on the variable costs incurred by Supplier in providing HP Steam,

including, but not limited to, the cost of fuel, water, electricity, and additives.

- (a) Customer's Consumption Charge shall be calculated by measuring the volume of HP Steam consumed in Customer's Premises using Supplier's Meter and multiplying the measured consumption by the Consumption Charge rate as per the method set forth in Exhibit D.
- (b) In the case of failure of Supplier's Meter to accurately measure the amount of HP Steam consumed by Customer, an estimate of the HP Steam actually consumed shall be made by Supplier based upon the average consumption of the Customer or of customers similarly situated to Customer during prior periods with similar outside temperatures; **provided however**, that such estimated adjustment period shall not exceed the beginning of the current calendar year.
- (c) In the event Customer believes the Premises Heating System is causing an inaccurate measure of HP Steam consumption, it is the Customer's responsibility to provide evidence of the issue to Supplier. Adjustments to charges for HP Steam consumption due to the malfunction of the Premises Heating System shall be made by Supplier for a maximum of ninety (90) days, if warranted, or for such longer period as determined at the sole and complete discretion of Supplier, **provided, however**, that such adjustment period shall not exceed the beginning of the current calendar year unless mutually agreed upon by the parties.
- (d) In the event Supplier reasonably determines the Premises Heating System is deficient or being operated by Customer in a manner which results in less than complete metering of all consumed HP Steam, Supplier shall:
 - (i) Immediately provide Customer with written notice of the discovered deficiency or inappropriate operation;
 - (ii) Estimate, based on the best data and information available, the consumption charge for HP Steam consumed but not metered. In no single incident shall Supplier bill customer for more than 90 days of inadvertently un-metered HP Steam consumption.
 - (iii) Provide Customer with a written explanation of how the estimate was arrived at. Customer shall be obligated to pay all undisputed charges over a period of time not to exceed ninety (90) days. Disputed charges shall be resolved pursuant any dispute resolution provisions of this Agreement and pursuant to the rights of the parties under the law if not addressed in any dispute resolution provisions of this Agreement.

5.3 Customer shall pay to Supplier, any applicable taxes pertaining to or resulting from the supply of HP steam to the Customer and /or the use of such HP Steam by Customer.

5.4 Customer shall pay to Supplier the sanitary sewer fee at the then applicable rate as established by the City of Duluth or such other governmental authority responsible for such sanitary sewer system **when** use of the HP Steam provided by Supplier results in discharge into the **sanitary** sewer system. However, if Customer pays any sanitary sewer fee directly to the City of Duluth or other governmental authority responsible for the sanitary sewer system, then Customer will not pay this fee to Supplier.

ARTICLE VI PAYMENT TERMS

6.1 Supplier shall deliver to Customer monthly statements reflecting all amounts then owing by Customer ("Invoice") by the tenth (10th) day of each month, including the Capacity Charge, the Consumption Charge and any additional amounts incurred by or otherwise accruing to Customer. Payment shall be due in full on or before the last day of the month in which that Invoice was timely delivered to Customer by Supplier.

6.2 Any undisputed amounts owing by Customer to Supplier pursuant to the terms of this Agreement and not paid when due shall accrue interest at the rate of 1.5% per month or the highest rate permitted by Minnesota Statute, whichever is less, until all amounts due hereunder are paid in full ("Service Charge").

ARTICLE VII EVENTS OF DEFAULT

7.1 The occurrence at any time of any of the following events shall constitute a "Supplier Default" unless such event occurs by reason of a Force Majeure Event as defined in Article X Section 10.3:

- (a) The failure of Supplier to provide Customer with HP Steam as required by this Agreement if and only if:
 - (i) Supplier has not provided Customer with substitute heat reasonably capable of meeting the Premises Heating System requirements of Customer; and
 - (ii) Such failure is not due to an interruption of service that is permitted pursuant to Article X below, and such failure continues for 10 consecutive days; and
 - (iii) Customer is ready, willing and able to receive such HP Steam and Supplier's failure is not otherwise the result of Customer's acts or omissions, or those of its agents, employees, tenants, customers or

contractors, or of any other persons for whom Customer is responsible or over which Customer has control; or

(iv) For a continuous period of forty-five (45) days Supplier is unable to provide HP Steam to the Customer in substantial compliance with this Agreement. Substantial compliance with this Agreement shall mean HP Steam is supplied to Customer by way of the Supplier's permanently installed District Energy System at a sufficient pressure and rate to maintain Premises Heating System steam operating pressures at or above the operating pressures experienced during all Premises operating conditions prior to Supplier's initial failure to provide HP Steam.

(b) If Supplier fails to perform or cause to be performed any obligation other than the requirement to provide HP Steam or substitute heat required to be performed by Supplier under this Agreement, **provided, however**, that if such failure by its nature can be cured, then Supplier shall have a period of forty-five (45) days after receipt of written notice from Customer of such failure to cure the same, and a Supplier Default shall not be deemed to exist during such period, and **provided further**, that if Supplier commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for an additional period of up to sixty (60) days to effect such cure.

7.2 At the discretion of Supplier, the occurrence at any time of any of the following events may constitute a "Customer Default" unless such event occurs by reason of a Force Majeure Event as defined in Article X:

(a) The failure of Customer to pay on or before the 15th day following the date when due and payable any undisputed amounts owing to Supplier under this Agreement;

(b) If Customer fails to perform or cause to be performed any other obligations required to be performed by Customer under this Agreement, **provided, however**, Customer shall have a period of forty-five (45) days after receipt of written notice from Supplier of such failure to cure the same, and a Customer Default shall not be deemed to exist during such period, and **provided further**, that if Customer commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for additional sixty (60) days.

(c) If the Customer Default is of such nature that immediate action on the part of Supplier is required, Supplier may terminate HP Steam supply to the Customer and to any and all Premises subject to the terms and conditions of this Agreement. Immediate actions are those instances that pose direct, immediate harm to the occupants of the Premises, such as uncontrolled leak. In such event, Supplier shall provide Customer reasonable time and

opportunity to cure the default by removing the risk of imminent harm to life or property. Provided Customer is diligently and in good faith attempting to affect such cure, Supplier shall not terminate this Agreement.

ARTICLE VIII REMEDIES

8.1 Customer's remedies upon the occurrence of a Supplier Default are as follows:

- (a) If a Supplier Default described in Section 7.1 above has occurred and Supplier has failed to cure such default within the time allowed thereunder, then this Agreement may be terminated by Customer upon five (5) days written notice and this Agreement shall be of no further force or effect.
- (b) Customer shall be entitled to an abatement of the Capacity Charge from the date on which such Supplier Default commenced through the date on which such Supplier Default is waived or cured or on which this Agreement is terminated.
- (c) In addition to the rights and remedies of Customer set forth above, Customer may pursue any and all other rights or remedies available to it at law or in equity upon the occurrence of a Supplier Default, including but not limited to any claims which Customer may have for property damage, (note, these provisions should not prevent claims for property damage, etc. from escape of steam, etc.)

8.2 Supplier's remedies upon Customer Default are as follows:

- (a) If any Customer Default described in Section 7.2 has occurred and Customer has failed to cure such default within the time allowed thereunder, then this Agreement may be terminated by Supplier upon five (5) days written notice and this Agreement shall be of no further force or effect except for the provisions of Section 1.7. Upon such termination, Supplier shall have the right to immediately discontinue the supply of HP Steam to Customer, and also shall have the right to disconnect all related piping and connections.
- (b) In addition to the rights and remedies of Supplier set forth above, Supplier may pursue any and all other rights or remedies available to it at law or in equity upon the occurrence of a Customer Default, including but not limited to any claims which Supplier may have for property damage.

8.3 Nothing in this Agreement is intended to cause either party to be, and neither party shall be, liable to the other party for any lost business, lost profits or revenues (other than profits and revenues lost by Supplier directly from Customer on account of a Customer Default), all claims for which are hereby irrevocably waived by Customer and Supplier.

ARTICLE IX **TERMINATION**

9.1 Notwithstanding anything to the contrary herein, if one or more of the following events or conditions shall exist or occur Supplier may elect at its option to terminate this Agreement by giving notice to Customer not less than sixty (60) days prior to the date of such termination:

- (a) Customer's Building is abandoned, destroyed, demolished, substantially destroyed or demolished and Customer does not commence restoration of the building within ninety (90) days after the date the damage occurs; becomes permanently inoperable or is taken by right of eminent domain for a period of 20 days or more; or,
- (b) It becomes unlawful under any valid federal or state law, regulation or rule for either Supplier to deliver to the Customer or the Customer to receive and pay for Thermal Energy.

9.2 If one or more of the following events or conditions shall exist or occur, Customer may elect at its option to terminate this Agreement by giving notice to Supplier of such fact no less than) sixty (60) days prior to the date of such termination:

- (a) It becomes unlawful under any valid federal or state law, regulation or rule for either Supplier to deliver to Customer or Customer to receive and pay for Thermal Energy;
- (b) For a continuous default lasting more than twenty (20) days, Supplier is unable to deliver HP Steam to the Customer in substantial compliance with this Agreement or if there is substantial damage to Customer's property or substantial interference with Customer's operations.

9.3 Upon the termination or expiration of this Agreement, any undisputed amounts then owing by a party to this Agreement to other party to this Agreement (including the amounts set forth in any riders attached hereto, if applicable), shall become immediately due and payable according to the terms herein, and the then future obligations of Customer or Supplier under this Agreement shall be terminated, including the requirements of Article 5 through the end of the Initial Term or any renewal terms if the Customer is in a renewal term, and all Capacity

Charges and Consumption Charges, excepting the indemnity obligations set forth in Article XI below.

ARTICLE X
SERVICE INTERRUPTIONS

10.1 Supplier shall have the right to interrupt or reduce Customer's HP Steam supply for a reasonable duration, upon prior notice to Customer, for the purpose of performing ordinary maintenance, repairs, replacements, connections or changes (on or off the Premises) of or to the District Energy System, or any other equipment or apparatus which is required by good engineering and operating practices or by manufacturers' specifications. Supplier shall diligently attempt to restore service as soon as is reasonably possible and, in order to minimize interference with the normal operation of the Premises, Supplier shall schedule such interruptions and reductions during summer months and during non-business hours to the extent reasonably practicable. Supplier shall not allow damage to Customer's property or substantial interference with Customer's operations.

10.2 Supplier shall have the right to interrupt or reduce Customer's HP Steam supply for a duration determined necessary by Supplier, in its good faith judgment, without prior notice to Customer, if: a Force Majeure Event has occurred that causes or requires such interruption or reduction of such service; or the Premises Heating System, the District Energy System, or the Premises has become dangerous or defective in Supplier's good faith judgment and, as a result thereof, Supplier believes that such interruption or reduction is necessary to prevent injury to other persons or damage to or destruction of any component of the District Energy System or the Premises Heating System, or to prevent the interruption or reduction of Supplier's steam service to its other customers. Supplier shall not allow damage to Customer's property or substantial interference with Customer's operations unless this is unavoidable.

10.3 **Force Majeure Events.** If either party to this Agreement is prevented from or delayed in performing any of its obligations under this Agreement by reason of a Force Majeure Event, including but not limited to strikes, labor unrest, war, acts of nature, acts of God, or acts of terrorism, such party shall notify the other party in writing as soon as practicable after the onset of such Force Majeure Event, and shall be excused from the performance of its obligations under this Agreement to the extent such Force Majeure Event has interfered with such performance. The party whose performance under this Agreement is prevented or delayed as the result of a Force Majeure Event shall use reasonable efforts to remedy its inability to perform. If a party's failure to perform its obligations under this Agreement is due to a Force Majeure Event, then such failure shall not be deemed a Supplier Default or a Customer Default. Notwithstanding anything in this Section to the contrary, the rights of access of the Supplier and the payment obligation of Customer under this Agreement shall not be interfered with, excused or delayed as the result of a Force Majeure Event.

ARTICLE XI
INDEMNIFICATION

11.1 TO THE EXTENT PERMITTED BY LAW SUPPLIER SHALL FULLY INDEMNIFY, SAVE HARMLESS AND DEFEND CUSTOMER FROM AND AGAINST ANY AND ALL EXPENSES INCURRED BY CUSTOMER IN CONNECTION WITH OR ARISING FROM ANY CLAIM BY A THIRD PARTY FOR PHYSICAL DAMAGE TO OR PHYSICAL DESTRUCTION OF PROPERTY, OR DEATH OF OR BODILY INJURY TO ANY PERSON, CAUSED BY (i) THE GROSS-NEGLIGENCE OR MISCONDUCT OR BREACH OF CONTRACT OF SUPPLIER, ITS AGENTS OR EMPLOYEES, OR OTHERS UNDER SUPPLIER'S CONTROL, AND (ii) A SUPPLIER DEFAULT.

11.2 TO THE EXTENT PERMITTED BY LAW CUSTOMER SHALL FULLY INDEMNIFY, SAVE HARMLESS AND DEFEND SUPPLIER FROM AND AGAINST ANY AND ALL EXPENSES INCURRED BY SUPPLIER IN CONNECTION WITH OR ARISING FROM ANY CLAIM BY A THIRD PARTY FOR PHYSICAL DAMAGE TO OR PHYSICAL DESTRUCTION OF PROPERTY, OR DEATH OF OR BODILY INJURY TO ANY PERSON, CAUSED BY (i) THE GROSS-NEGLIGENCE OR MISCONDUCT OR BREACH OF CONTRACT OF CUSTOMER, ITS AGENTS OR EMPLOYEES, OR OTHERS UNDER CUSTOMER'S CONTROL, AND (ii) A CUSTOMER DEFAULT.

11.3 Any party seeking indemnification under this Article XI (“Indemnified Party”) shall deliver to the party against whom they are seeking indemnity (“Indemnitor”) a notice describing the facts underlying its indemnification claim and the amount of such claim (“Claim Notice”). A Claim Notice describing any action at law or in equity involving an Indemnified Party shall be delivered promptly to the Indemnitor after the such Indemnified Party receives notice that such action or suit has commenced; **provided, however**, that failure to deliver such Claim Notice as aforesaid shall not relieve the Indemnitor of its obligations under this Article XI, except to the extent that such Indemnitor has been prejudiced by such failure.

11.4 The amount to which an Indemnified Party is entitled under this Article XI shall be determined by (i) a mutually satisfactory written agreement between such Indemnified Party and the Indemnitor, (ii) a final judgment or decree of any court of competent jurisdiction, or (iii) any other means agreed upon by such Indemnified Party and the Indemnitor.

11.5 If requested by an Indemnified Party, the Indemnitor shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; **provided, however**, that if the Indemnitor is a defendant in any such action and the Indemnified Party believes that there may be legal defenses available to it which are inconsistent with those available to the Indemnitor, the Indemnified Party shall have the right to select separate counsel to participate in the defense of such action at the Indemnitor’s expense. If any claim, action, proceeding or investigation arises as to which

the indemnity provided for in this Article XI applies, and the Indemnitor fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnitor's expense, contest or, with the prior written consent of the Indemnitor, which consent shall not be unreasonably withheld, contest or settle such claim, action, proceeding or investigation. All reasonable costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid by and shall be an obligation hereunder of the Indemnitor.

11.6 The provisions of this Article XI shall survive the expiration or termination of this Agreement.

ARTICLE XII **MISCELLANEOUS**

12.1 Customer shall be able to assign its obligations under this Agreement if and only if Customer is concurrently assigning or otherwise conveying its entire interest in the Premises, provided that such assignee must acknowledge and accept such assignment and assume all of Customer's obligations in writing, and provided further that such assignment shall not relieve Customer from liability for any of the payment obligations of Customer then existing, unless otherwise specifically agreed to in writing by such assignee and by Supplier.

12.2 Supplier shall have the right to assign its interests hereunder at its sole discretion and the Customer hereby agrees that all of the rights, powers and remedies of Supplier shall inure to the benefit of Supplier's successors and assigns. Supplier's assignment shall not relieve Supplier of any obligations or liabilities under this Agreement, Customer provides written consent thereto; which consent shall not be unreasonably withheld, conditioned or delayed.

12.3 This Agreement (including any Exhibits attached hereto) represents the entire agreement between the parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous oral or written agreements.

12.4 This Agreement shall not be amended, modified or supplemented without the written agreement of Supplier and Customer at the time of such amendment, modification or supplementation.

12.5 No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the party making such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. Failure by a party to this Agreement to insist upon full and prompt performance of any provision of this Agreement, or to take action in the event of any breach of any such provision or upon the occurrence of any Supplier Default or Customer Default, as applicable, shall not constitute a waiver of any rights of such party, and, subject to the notice requirements of this Agreement, such party may at any time after such failure exercise all rights and remedies available under this Agreement with respect to such Supplier Default or

Customer Default. Receipt by a party to this Agreement of any instrument or document shall not constitute or be deemed to be an approval of such instrument or document. Any approvals required under this Agreement must be in writing, and signed by the party whose approval is being sought.

12.6 In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of law, or by reason of the interpretation of such provision by any administrative agency or any court of competent jurisdiction, Supplier and Customer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect. If any provisions of this Agreement are determined to be invalid, the remaining provisions shall be given full force and effect to the extent possible.

12.7 This Agreement may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Agreement. The parties hereto agree that scanned or electronic signatures shall be considered as originals.

12.8 This Agreement shall be governed by and construed in accordance with the laws of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in the City of Duluth, Saint Louis County, Minnesota. This paragraph does not limit the parties' power to arbitrate any disputes by mutual consent.

12.9 This Agreement is only for the benefit of the parties to this Agreement, their successors and permitted assigns and persons expressly benefited by the indemnity provisions of this Agreement. Unless otherwise identified herein, no other person (including, without limitation, tenants of the Premises) shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any party of its obligations under, this Agreement.

12.10 Except as provided in Article IX of this Agreement, including Section 11.5, in the event the Parties are required to employ legal counsel or incur other expenses to enforce any obligation of the other Party hereunder, each party shall be responsible for its own incurred legal expenses and shall not be entitled to recover such expenses from the other Party.

12.11 Supplier reserves the right from time to time to assign its rights under this Agreement (including its rights to payments hereunder) to one or more creditors (each, a "Secured Party") as collateral security for one or more financings, and Customer hereby agrees to any and all such assignments. As a result of such assignment, Customer may receive notice from such Secured Party with an assertion that an event of default has occurred under the financing, and that payments under this Agreement are to be made to such Secured Party. Customer also hereby agrees to make such payments to such Secured Party, and Supplier agrees to hold Customer harmless for making such payments to such Secured Party after Customer has received such notice of default. Customer further agrees that all such Secured Parties shall be deemed third- party beneficiaries of this

Agreement, until such time as Customer receives written notice to the contrary from Supplier and each such Secured Party.

12.12 All notices, communications and waivers under this Agreement shall be in writing and shall be hand delivered or mailed, postage prepaid, to the addresses as set forth herein, or to any other address as the parties to this Agreement shall designate in writing.

12.13 This Agreement shall not be binding upon Customer until such time as it is signed by a duly authorized representative of Customer. The person(s) executing this Agreement on behalf of Customer represent(s) and warrant(s) that, if Customer is a corporation or a partnership or other legal entity, the undersigned is/are duly authorized and empowered to execute and enter into this Agreement, and obligate and bind Customer to this Agreement and to the covenants, obligations, and requirements hereof.

12.14 This Agreement shall not be binding upon Supplier until such time as it is signed by a duly authorized representative of Supplier. Supplier's representative executing this Agreement also represents and warrants that he or she is duly authorized and empowered to enter into this Agreement on behalf of Supplier and obligate and bind Supplier to this Agreement and to the covenants, obligations, and requirements hereof..

12.15 In the event that a dispute arises between the Supplier and the Customer, they shall first attempt to resolve such issues between themselves. If they are not successful in doing so, then the parties shall participate in nonbinding mediation with a mutually agreed mediator and shall do so within 90 days of the request for mediation by either party. If the parties do not resolve their dispute through mediation, then they may exercise all rights which they have to resolve such dispute. If any applicable statute of limitation might run during the time for mediation, the parties may commence an action as permitted by law without waiting for the completion of the mediation, but shall still participate in the mediation nonetheless if that is possible.

(Remainder of page intentionally blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date first written above.

CUSTOMER:

By: _____ Date: _____
(Signature)

Print Name: _____

Its: _____

SUPPLIER: (by and through its manager, Ever-Green Energy, Inc.):

By: _____ Date: _____
(Signature)

Terry W. Nanti

Its: General Manager

EXHIBIT A – Easement

Remainder of page intentionally blank

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this “**Easement Agreement**”) is made and entered into as of this _____ day of _____, 2017, by and between Independent School District 709, a public school district existing under the laws of the State of Minnesota (hereinafter referred to as “**Grantor**”) and the City of Duluth, Minnesota, a body politic and corporate under the laws of Minnesota (hereinafter referred to as “**Grantee**”).

WHEREAS, Grantor is the owner of the real property (the “**Premises**”) located in the City of Duluth, St. Louis County, Minnesota, commonly known as Historic Old Central High School, which Premises is legally described on Easement Exhibit A attached hereto and incorporated herein; and

WHEREAS, Grantor desires to receive high pressure steam service (the “**Steam Service**”) from the district heating system (hereinafter referred to as the **District Energy System**) owned by Grantee for heating and other purposes at the building located on the Premises; and

WHEREAS, in order for Grantee to provide the Steam Service to the Premises, certain piping, equipment and other appurtenances owned by Grantee thereto (collectively, the “**District Energy System Equipment**”) must be installed and/or constructed by Grantee or its agents at the Premises to enable the building’s heating system (the **Premises Heating System**) owned by Grantor and located at the Premises to be connected to the District Energy System; and

WHEREAS, in order to facilitate the installation and construction of the District Energy System Equipment required to provide the Steam Service, Grantor and Grantee are entering into a certain Steam Service Agreement (the “**Service Agreement**”), pursuant to which Grantee shall agree to provide the Steam Service to the Premises in consideration of Grantor agreeing to certain obligations which shall include, among other things, granting an easement to Grantee for the District Energy System Equipment; and

WHEREAS, the parties recognize that an easement through a portion of the Premises for the construction, installation, inspection, maintenance, repair, replacement, reconstruction, and improvement of the District Energy System Equipment is necessary for Grantee to deliver the Steam Service in accordance with the Service Agreement.

NOW, THEREFORE, in consideration of the foregoing and the representations, covenants, and agreements of the parties set forth herein and other good and valuable consideration, the receipt and sufficiency of which each party acknowledges, Grantor and Grantee hereby represent, covenant, and agree as follows:

1. Grant of Easement. Grantor does hereby grant and convey to Grantee, its successors and assigns, the following easement (the “**Easement**”):

A permanent nonexclusive easement in, under and through the portion of the Premises depicted/legally described in Easement Exhibit B attached hereto and incorporated herein (the “**Easement Property**”) for the construction, installation, inspection (including reading

of meters), maintenance, repair, replacement, reconstruction, or improvement of the District Energy System Equipment to be located subsurface and/or within the basement of the building or buildings located at the Premises, including the right to enter onto the Easement Property for the foregoing purposes and further including the right of access to the Easement Property through the structures or improvements now or hereafter located on all or a part of the Premises. The Easement expressly includes the right of Grantee to extend its pipes through and outside of the Premises in order to connect to and serve other buildings on the District Energy System.

2. Maintenance. Grantor is responsible at its sole expense for maintaining of all Premises Heating System equipment unless otherwise assigned to Grantee in the Service Agreement. Grantee is responsible at its sole expense for maintaining any District Energy System Equipment located within the Easement Property depicted in Easement Exhibit B.

3. Repair and Restoration; Compliance with Laws. Grantee shall repair or restore that part of the Easement Property disturbed by Grantee in the course of its permitted activities under this Easement Agreement to its existing condition prior to Grantee's disturbance, reasonable and normal wear and tear excepted. Grantee agrees that all activities performed on its behalf in the Easement Area shall be performed in compliance with all laws, rules, regulations, orders and ordinances of the governmental authorities having jurisdiction.

4. Indemnification. Grantee agrees to indemnify, defend and hold harmless Grantor from and against any and all costs, liabilities, claims, liens, encumbrances or causes of action (including reasonable attorneys' fees) arising out of the use of the Easement Area by Grantee or its tenants, employees, invitees, contractors, or agents. Grantor agrees to indemnify, defend and hold harmless Grantee from and against all costs, liabilities, claims, liens, encumbrances of causes of action (including reasonable attorneys' fees) arising out of: (a) any failure by Grantor to provide access to the Premises to Grantee as required under this Easement Agreement, or (b) negligence or misconduct by Grantor in its maintenance of the Premises.

Notwithstanding anything contained herein, should this Easement be assigned by the Grantee to a non-public entity, it is agreed that:

- (i) The Minnesota Municipal Liability Tort Act shall no longer be applicable.
- (ii) Grantee shall insure its obligations hereunder through an insurance policy from a reputable carrier acceptable to Grantor, with liability limits of no less than \$5,000,000 per incident and \$10,000,000 in aggregate. Grantor shall be entitled to Acord certificates regarding the coverages to be furnished annually by Grantee. Such certificates and underlying policy shall provide that no termination or non-renewal of the insurance shall be effective without ten (10) days' notice to Grantor.

5. Governing Law. This Agreement is made under and shall be interpreted, governed by, and enforced pursuant to the laws of the State of Minnesota.

6. Inurement. This Agreement and each and every covenant, agreement, and other provision hereof shall inure to the benefit of and be binding upon the each of parties hereto and their respective successors and assigns.

7. Title to Easement Area. Grantor warrants that it is the owner in fee simple of the Premises and has good right to convey the interest in the Easement Property conveyed to Grantee.

8. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

9. Notices. All notices, demands and requests (collectively “**Notice**”) required or permitted to be given under this Easement Agreement must be in writing and delivered to the below address via U.S. certified mail, postage prepaid, return receipt requested, or by nationally-recognized overnight delivery service, delivery charges prepaid, and Notice will be deemed to have been given on the date shown on the return receipt if delivered via certified mail, or on the date shown on the confirmation form if delivered by nationally-recognized overnight delivery service.

If Notice to Grantor: Independent School District No. 709
Historic Old Central High School
215 N. First Ave East
Duluth, MN 55802

Attn: _____

If Notice to Grantee: City of Duluth
411 W. First St.
Duluth, MN 55802
Attn: City Attorney

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

Rejection or refusal to accept or the inability to deliver because of a changed address of which no Notice was given will be deemed to be receipt of Notice as of the date of rejection, refusal or inability to deliver. Either party may change its Notice address by giving Notice to the other party to any other address by giving Notice of address change in the manner for giving Notice set forth in this Section. If applicable, Notice will be given to successors and assigns of the parties to the current record owner at the address stated for receipt of tax records as maintained by the St. Louis County Assessor’s Office.

IN WITNESS WHEREOF, the parties have each caused this Easement Agreement to be executed effective as of the date first written above.

GRANTOR:

Independent School District No. 709

By _____

Name: _____

Its: _____

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

The foregoing instrument was acknowledged before me this _____ day of September, 2017 by Independent School District No. 709, an independent Minnesota public school district, on behalf of such school district.

Notary Public

GRANTEE:
CITY OF DULUTH

By: _____
Emily Larson, Its Mayor

Attest:

By: _____
City Clerk

Approved:

By: _____
Assistant City Attorney

Countersigned:

By: _____
City Auditor

STATE OF MINNESOTA }
 } ss.
COUNTY OF ST. LOUIS }

The foregoing was acknowledged before me this _____ day of _____ 2017,
by _____, the _____ of the City of Duluth, a body politic
and corporate under the laws of Minnesota.

Notary Public

This instrument was drafted by:

Assistant City Attorney
City of Duluth
411 W. First St.
Duluth, MN 55802

**EASEMENT EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY**

DULUTH PROPER 1ST DIVISION EAST 2ND STREET
LOTS 2 THRU 22 EVEN NUMBERED LOTS

EASEMENT EXHIBIT B LEGAL DESCRIPTION OF EASEMENT

LEGAL DESCRIPTION FOR STEAM LINE EASEMENT

An easement for steam line purposes lying over, under and across that part of Lots 2, 4 and 6, DULUTH PROPER FIRST DIVISION EAST THIRD STREET, according to the recorded plat thereof, St. Louis County, Minnesota and over that part of the platted alley lying adjacent to said Lot 2, described as follows:

Commencing at the intersection of the Northwestern line of East Second Street and the Northeasterly line of Lake Avenue as dedicated on said DULUTH PROPER FIRST DIVISION; thence on an assumed bearing of North 48 degrees 25 minutes 43 seconds West, along said Northeasterly line of Lake Avenue, a distance of 146.90 feet to the point of beginning of the easement herein described; thence North 38 degrees 26 minutes 27 seconds East 11.14 feet; thence North 24 degrees 16 minutes 19 seconds East 14.58 feet; thence North 02 degrees 35 minutes 08 seconds West 49.32 feet; thence North 41 degrees 16 minutes 21 seconds East 52.42 feet; thence North 46 degrees 40 minutes 59 seconds West 8.92 feet; thence North 43 degrees 19 minutes 01 seconds East 3.39 feet; thence North 46 degrees 40 minutes 59 seconds West 9.50 feet; thence South 43 degrees 19 minutes 01 seconds West 9.50 feet; thence South 46 degrees 40 minutes 59 seconds East 9.50 feet; thence North 43 degrees 19 minutes 01 seconds East 3.11 feet; thence South 46 degrees 40 minutes 59 seconds East 6.03 feet; thence South 41 degrees 16 minutes 21 seconds West 50.73 feet; thence South 02 degrees 35 minutes 08 seconds East 49.81 feet; thence South 24 degrees 16 minutes 19 seconds West 13.49 feet; thence South 38 degrees 26 minutes 27 seconds West 10.60 feet to said Northeasterly line of Lake Avenue; thence South 48 degrees 25 minutes 43 seconds East, along said Northeasterly line a distance of 3.00 feet to the point of beginning.

Said easement contains 491 sq. ft.

THIS IS NOT A BOUNDARY SURVEY.

BEARINGS ARE BASED ON THE ST. LOUIS COUNTY TRANSVERSE MERCATOR COORDINATE SYSTEM OF 1996.

BUILDING DIMENSIONS SHOWN ARE FOR HORIZONTAL & VERTICAL PLACEMENT OF STRUCTURE ONLY.

THIS SURVEY HAS BEEN PREPARED WITHOUT BENEFIT OF A TITLE COMMITMENT OR TITLE OPINION. A TITLE SEARCH FOR RECORDED OR UNRECORDED EASEMENTS WHICH MAY BENEFIT OR ENCUMBER THIS PROPERTY HAS NOT BEEN COMPLETED BY ALTA LAND SURVEY COMPANY.

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.


David R. Evanson

Date: 10-26-2016 MN Lic. No. 49505

STEAM LINE EASEMENT EXHIBIT	
CLIENT: DULUTH ENERGY SYSTEMS	REVISIONS: XXX
DATE: 10-26-2016	
ADDRESS: 15 EAST SECOND STREET DULUTH, MN	
JOB NUMBER: 16-313	SHEET 1 OF 2 SHEETS



ALTA
LAND SURVEY COMPANY

* LAND SURVEYING PHONE: 218-727-5211
* LAND DEVELOPMENT LICENSED IN MN & WI
* PLATTING CERTIFIED FEDERAL SURVEYOR
* LEGAL DESCRIPTIONS WWW.ALTLANDSURVEYDULUTH.COM
* CONSTRUCTION STAKING

EASEMENT EXHIBIT B (continued)

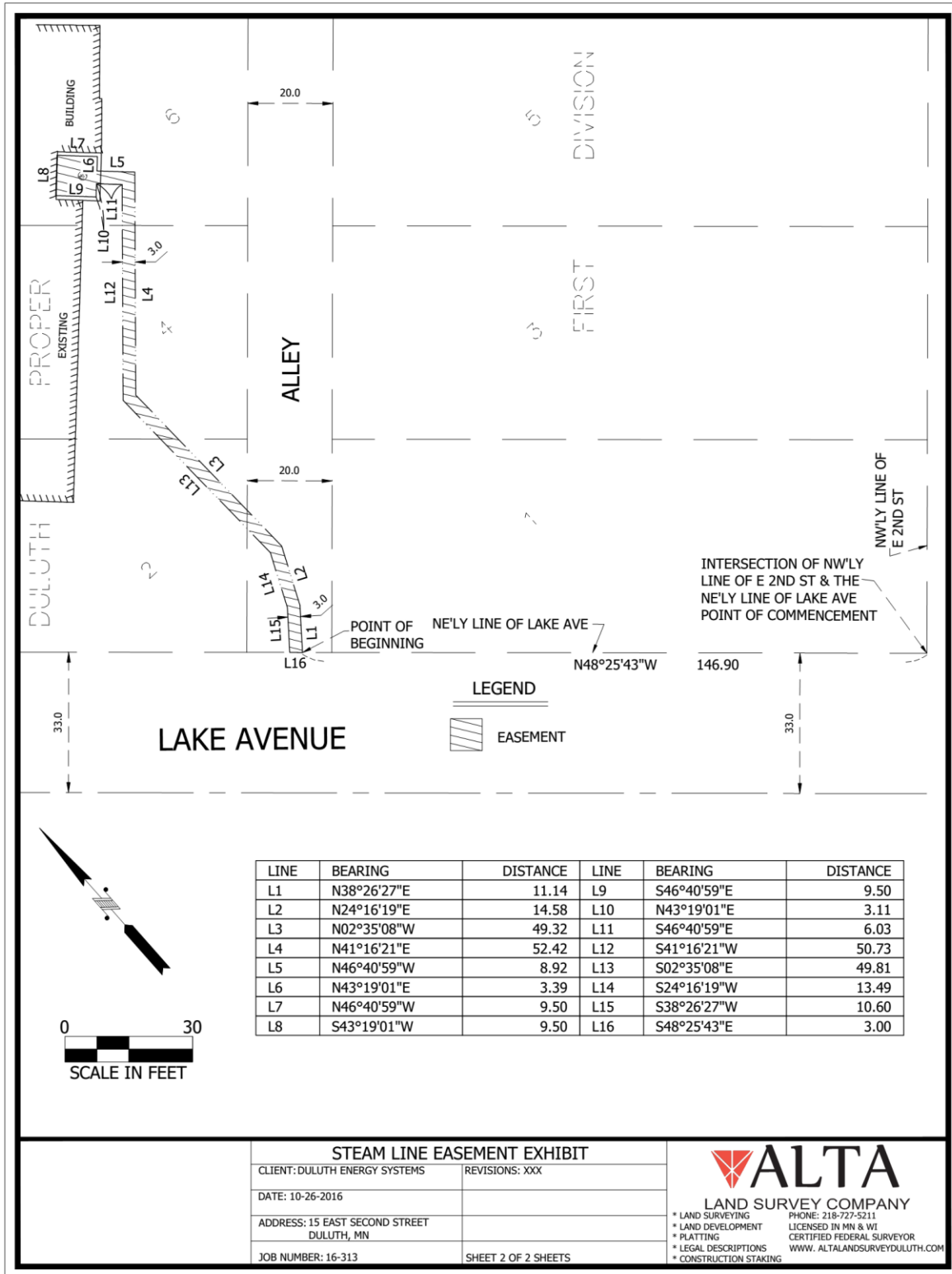


EXHIBIT B: Equipment Ownership and Maintenance Responsibility Schematic

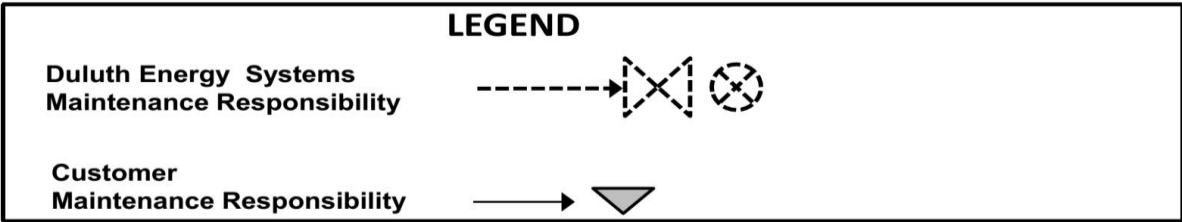
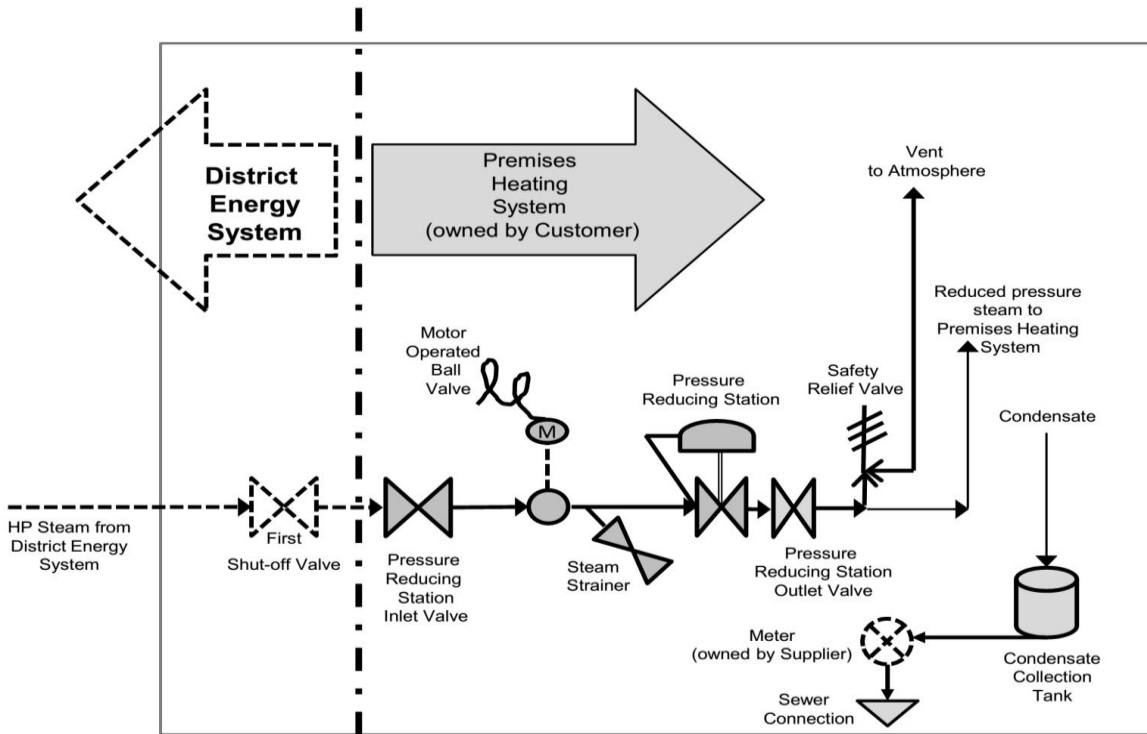
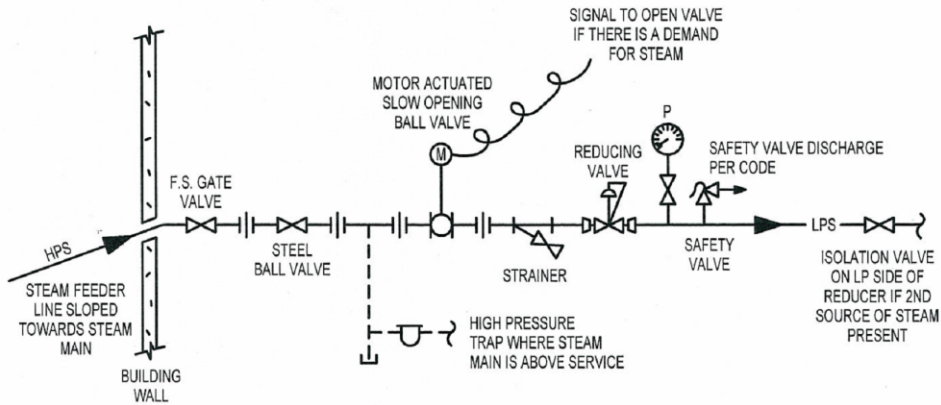
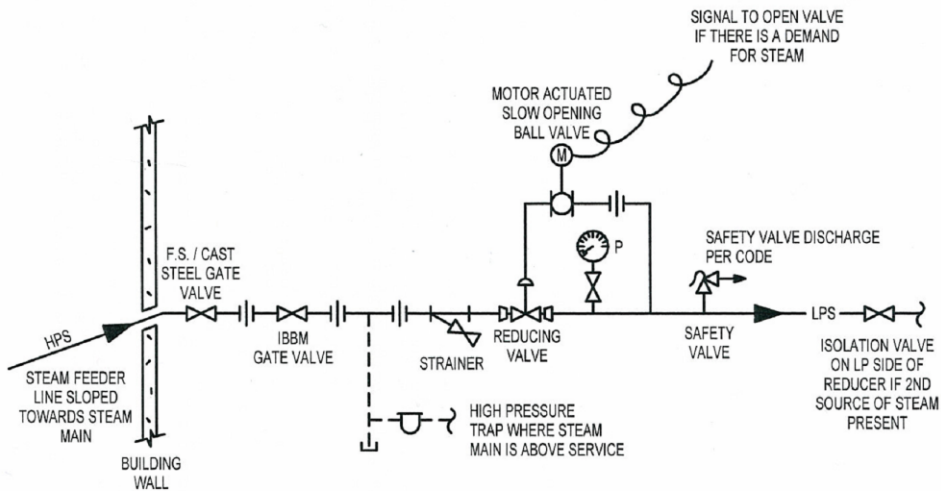



EXHIBIT C – Connection Standards

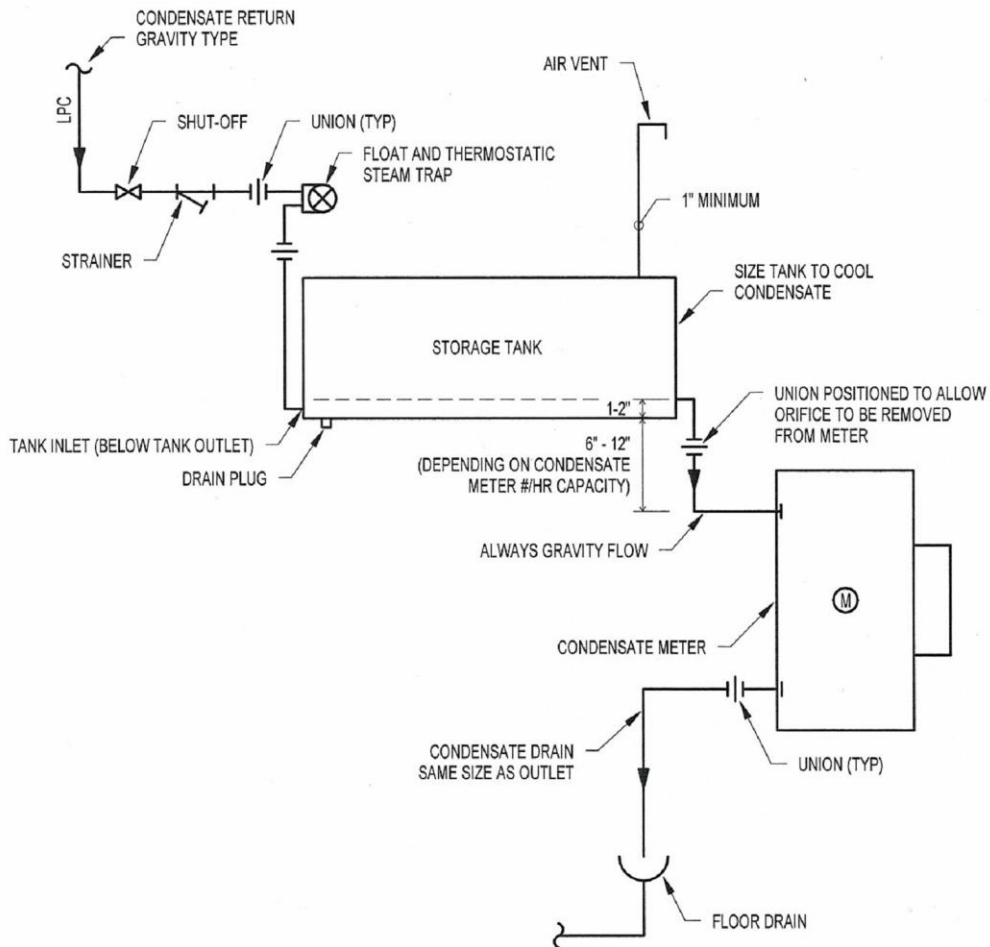


1 LESS THAN 1" SERVICE NO SCALE





2 GREATER THAN 1" SERVICE NO SCALE

 <p>PERFORMANCE DRIVEN DESIGN. LH@corp.com 21 W. Superior St., Ste 500 Duluth, MN 55802 218.727.8448</p>	<p>CLIENT NAME: DULUTH STEAM</p> <p>One Lake Place Drive Duluth, MN 55802 218.723.3601</p>	<p>I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.</p> <p>Signature: <i>David Williams</i></p> <p>Typed or Printed Name: DAVID WILLIAMS</p> <p>Date: 05/05/14 Reg. No.: 18929</p>	<p>DWG. TITLE: STEAM SERVICE DETAILS</p> <hr/> <p>PROJ. NO: 140155 DRAWN BY: MPT CHECKED BY: DTW DRAWING NO: M1.01</p>
	<p>COPYRIGHT 2014 BY LHB, INC. ALL RIGHTS RESERVED.</p>		



1 TYPICAL CONDENSATE METER INSTALLATION
NO SCALE

 <p>PERFORMANCE DRIVEN DESIGN. LHBcorp.com</p> <p>21 W. Superior St., Ste 500 Duluth, MN 55802 218.727.9446</p>	<p>CLIENT NAME: DULUTH STEAM</p> <p>One Lake Place Drive Duluth, MN 55802 218.723.3601</p>	<p>I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.</p> <p>Signature: </p> <p>Typed or Printed Name: <u>DAVID WILLIAMS</u></p> <p>Date: <u>05/05/14</u> Reg. No.: <u>18929</u></p>	<p>DWG. TITLE: CONDENSATE METER DETAIL</p> <p>PROJ. NO: 140155 DRAWN BY: MPT CHECKED BY: DTW DRAWING NO: M1.00</p>
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EXHIBIT D – 2016 Rate Calculation

Customer s’ Total Monthly Cost of Steam Service

$$\text{Cost} = \text{Consumption Charge} + \text{Capacity Charge} + \text{Condensate Sewer Charge} + \text{State and City Sales Tax}$$

$$\text{Consumption Charge} = \text{Consumption Rate} \times \text{Customer's Metered Consumption}$$

For the purposes of the rate calculation, the months of January, February, March, April, May, October, November and December comprise the “Heating Season”; the remaining months of June, July, August and September comprise the “Off-Season” .

At the beginning of the fiscal year, the Heating Season Consumption Rate (**R_{HS}**) is set at 95% of the projected annual Consumption Rate. As the year progresses from January, actual variable costs and consumption will replace projected costs and consumption resulting in monthly changes to the **R_{HS}** calculated as follows:

$$\text{R}_{\text{HS}} = \left(\frac{(\text{Actual Variable Costs incurred} + \text{Remaining Projected Variable Costs})}{\text{Actual Steam Consumed to date} + \text{Projected Additional Steam Consumption for the year}} \right) \times 95\%$$

The Off Season Consumption Charge Rate (**R_{OS}**) is calculated each month; June through September with actual variable costs and consumption replacing projected costs and consumption as follows:

$$\text{R}_{\text{OS}} = \frac{(\text{Actual Variable Costs Incurred} + \text{Projected Additional Annual Costs} - \text{Actual Heating Season Consumption Charges Billed} - \text{Remaining Projected Heating Season Variable Costs})}{(\text{Actual Off-Season Consumption to date} + \text{Remaining Projected Off-Season Consumption})}$$

Each customer’s monthly Consumption Charge is equal to the customer’s metered consumption multiplied by the appropriate Consumption Rate (**R_{HS}** or **R_{OS}**).

$$\text{Monthly Capacity Charge} = \frac{\text{Normalized Steam Consumption} \times \text{Group Capacity Charge Rate}}{12}$$

Capacity Year Consumption = a building’s average steam consumption for a given 12 month period starting on July 1st and ending on June 30th for each of the three previous years (n, n-1, n-2)

$$\text{Weather Normalization Factor} = \frac{\text{(the normal total number of Heating Degree days for a given 12 month July 1 to June 30 period)}}{\text{(the actual total number of Heating Degree Days for a given 12 month July 1 to June 30 period)}}$$

Note: Heating Degree Days (HDD) as reported by NOAA at the Duluth International Airport using a 65° F base temperature

$$\text{Normalized Steam Consumption} = \frac{\text{(Capacity Year Consumption}_n \times \text{Weather Normalization Factor}_n + \text{Capacity Year Consumption}_{n-1} \times \text{Weather Normalization Factor}_{n-1} + \text{Capacity Year Consumption}_{n-2} \times \text{Weather Normalization Factor}_{n-2})}{3}$$

Consumption Group = Customer grouping categories based on a customer's Normalized Steam Consumption

Normalized Group Consumption = Total Normalized Steam Consumption for all Customers in a Consumption Group

$$\text{Group Consumption Percentage} = \frac{\text{Normalized Group Consumption}}{\text{(Total Normalized Group Consumption for all Consumption Groups)}}$$

Group Factor = Factor for each Consumption Group

Group Factor Percentage = Group Factor x Group Consumption Percentage

$$\text{Adjusted Group Factor Percentage} = \frac{\text{Group Factor Percentage}}{\text{Sum of all Group Factor Percentages}}$$

Group Fixed Capacity Charge Allocation = Adjusted Group Factor Percentage x Total System Projected Fixed Costs

$$\text{Group Capacity Charge Rate} = \frac{\text{Group Fixed Capacity Charge Budget Allocation}}{\text{Normalized Group Consumption}}$$

2016 Capacity Charge Rates

Consumption Group	Group Consumption Ranges (klbs/yr)	Normalized Group Consumption (klbs/yr)	Group Consumption Percentage	Projected Group Capacity Charge Annual Revenue	2016 Capacity Charge Rate (\$/klb)
1	Less than 1,000	34,488	10.14%	\$429,159	\$12.44
2	1,000 - 4,999	119,782	35.23%	\$1,416,005	\$11.82
3	5,000 - 9,999	23,359	6.87%	\$261,599	\$11.20
4	10,000 - 14,999	59,981	17.64%	\$634,428	\$10.58
5	15,000 - 24,999	35,652	10.49%	\$354,918	\$9.95
6	25,000 - 39,999	0	0.00%	\$0	\$0.00
7	40,000 - 54,999	0	0.00%	\$0	\$0.00
8	55,000 - 69,999	66,749	19.63%	\$539,891	\$8.09
9	70,000 - 84,999	0	0.00%	\$0	\$0.00
10	85,000 - 104,999	0	0.00%	\$0	\$0.00
11	105,000 - 144,999	0	0.00%	\$0	\$0.00
12	Over 125,000	0	0.00%	\$0	\$0.00

A **Condensate Sanitary Sewer Charge** is applied in those cases where buildings' steam condensate discharges to the sanitary sewer system.

EXHIBIT E – Definitions

Capacity Charge: The annual charge for fixed costs incurred by Supplier to supply HP Steam to Customer. Fixed costs include, but are not limited to: the amortized costs of acquiring, installing and constructing the District Energy System and financing costs related thereto; projected maintenance costs; and projected fixed operational costs (payroll, insurance, etc.). The Capacity Charge is calculated annually and is normally billed to Customer in twelve (12) equal consecutive monthly installments. See Article V - Section 5.1.

Commencement Date: The date Customer commences consuming District Energy System-provided HP Steam.

Condensate: Condensate is simply steam in its liquid form, i.e. water. As heat is transferred or removed from steam, either intentionally to do useful work such as heating a building or unintentionally due to missing steam pipe insulation, steam vapor changes phase to liquid condensate. Because water flow is more accurately measured than steam flow, Duluth Energy Systems meters condensate flow in customers' buildings rather than measuring HP Steam flow.

Connection Charge: All reasonable expenses and charges related to connecting Customer's Premises to the District Energy System.

Consumption Charge: The monthly charge for variable costs incurred by Supplier to produce the HP Steam consumed by Customer. Variable costs include, but are not limited to the cost of fuel, water, electricity, and chemical additives. Customers' Consumption Charges are calculated each month based on that Customer's metered HP Steam consumption. See Article V - Section 5.2.

District Energy System: The Supplier's production facilities, distribution system and metering equipment.

Effective Date: The later of date the Customer or Supplier signs this Agreement.

First Shut-off Valve: The first steam valve installed in the Premises on the pipe which runs between the District Energy System and the Premises Heating System. See Exhibit B.

High Pressure Steam (HP Steam): Steam at a pressure greater than or equal to 15 pounds per square inch (psi). The District Energy System provides High Pressure Steam to its customers.

Meter: Steam consumed in Customer's Premises is measured in pounds (lbs) using a condensate meter. As heat is removed from steam, it cools and changes phase from a vapor (steam) to a liquid (condensate). One (1) lb of steam changes phase to one (1) lb of condensate when cooled.

Metered Steam: The abbreviation for one-thousand (1,000) pounds is klb. One thousand pounds of steam (1 klb) has an energy content of one million, one hundred, ninety six thousand (1,196,000) British Thermal Units (Btu). The abbreviation for one million BTU is mmBtu. Therefore, 1,000 lbs steam = 1klb steam = 1.196 mmBtu

Premises Heating System: All steam and condensate piping, valves other and components or equipment installed in the Premises after (downstream of) the First Shut-off Valve, with the exception of the Supplier-owned condensate Meter. The Premises Heating System is owned and operated by the Customer. See Exhibit B.

Steam Service: The Supplier-produced and distributed HP Steam and associated Supplier-performed activities (metering, invoicing, account management, maintenance, etc.) received and purchased by Customer.