

PUBLIC WORKS AND UTILITIES COMMITTEE

14-0154R

RESOLUTION AUTHORIZING PROPER CITY OFFICIALS TO ACCEPT A GRANT FROM THE STATE OF MINNESOTA, COMMISSIONER OF AGRICULTURE, ON BEHALF OF DULUTH STEAM, IN THE TOTAL AMOUNT OF \$150,000 FOR THE PURPOSE OF SUPPORTING THE BIOMASS COFIRING PROJECT.

CITY PROPOSAL:

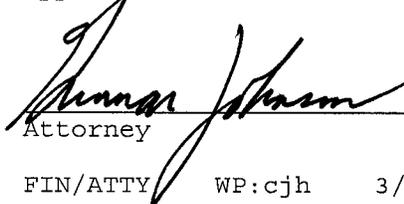
RESOLVED, that the proper city officials are hereby authorized to accept a grant from the state of Minnesota, commissioner of agriculture in the amount of \$150,000 and to execute a grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. _____, on behalf of Duluth Steam, for the purpose of supporting the operations of the biomass cofiring project, for the period beginning on the date of execution of the grant agreement and ending June 30, 2017, funds to be deposited in Fund 540-920-1496-4220 (Steam Fund, Steam Department, Utility Revenues, State of MN Grants), and authorizing said officials to execute all documents necessary thereto.

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

FIN/ATTY WP:cjh 3/26/2014

STATEMENT OF PURPOSE: This resolution authorizes the proper city officials to accept a grant from the Minnesota commissioner of agriculture to support Duluth

Steam's operation of the Biomass Cofiring Project, as managed by Ever-Green Energy, LLC. Funding for this project will provide a range of resources and infrastructure necessary for Duluth Steam to shift a substantial portion of its fossil fuel inputs to biomass.

STATE OF MINNESOTA GRANT CONTRACT

This grant contract is between the State of Minnesota, acting through its Commissioner of Agriculture, and the Duluth Steam (Grantee).

Recitals

1. Under Minn. Stat. § 41A.105, the State is empowered to enter into this grant.
2. The State is in need of research and development of advanced bioenergy and biochemical projects.
3. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the State.

Grant Contract

1 Term of Grant Contract

1.1 **Effective date:** April 1, 2014, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.

The Grantee must not begin work under this grant contract until this contract is fully executed and the Grantee has been notified by the State's Authorized Representative to begin the work.

1.2 **Expiration date:** June 30, 2017, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this grant contract:
8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 13. Publicity and Endorsement; 14. Governing Law, Jurisdiction, and Venue; and 16 Data Disclosure.

2 Grantee's Duties

The Grantee, who is not a state employee, will perform the work as indicated in the work plan, which is attached and incorporated into this contract as Attachment A. The Grantee will submit quarterly reports to the Commissioner of Agriculture describing the status of work tasks outlined in Attachment A, as well as any changes in scope, schedule, or cost of the work. Reports must be submitted by the following dates: : July 25, 2014; October 31, 2014; January 30, 2015; April 24, 2015, July 31, 2015, October 30, 2015, January 29, 2016, April 29, 2016, July 29, 2016, October 28, 2016, January 27, 2017, April 28, 2017 and July 28, 2017. The state may withhold funds or require changes if quarterly reports do not include the required information or are not submitted by the dates specified in this contract.

3 Time

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

4 Consideration and Payment

4.1 **Consideration.** The State will pay for all services performed by the Grantee under this grant contract as follows:

(1) **Compensation.** The State will pay the Grantee a total of \$150,000.00.

(2) **Travel Expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Grantee as a result of this grant contract will not exceed \$0.00; provided that the Grantee will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Commissioner's Plan" promulgated by the commissioner of Employee Relations. The Grantee will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written

approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

- (3) **Total Obligation.** The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract will not exceed \$150,000.00.

4.2. **Payment**

- (1) **Invoices.** The State will promptly pay the Grantee after the Grantee presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the following schedule: : July 25, 2014; October 31, 2014; January 30, 2015; April 24, 2015, July 31, 2015, October 30, 2015, January 29, 2016, April 29, 2016, July 29, 2016, October 28, 2016, January 27, 2017, April 28, 2017 and July 28, 2017.
- (2) **Final payment.** The State will withhold the 10% total grant allotment pending the submission of the Grantees final report and invoice.

4.3. **Budget Subcategories.** Up to 10% of the Grantee's budget may be moved between budget subcategories **upon notice to and written approval by MDA.** To move more than 10% from one subcategory to another will require an amendment to the Grant Contract.

5 **Conditions of Payment**

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

6 **Authorized Representative**

The State's Authorized Representative is Kevin Hennessy (Bioenergy Manager, Agricultural Marketing and Development, Minnesota Department of Agriculture; 625 Robert Street North, St. Paul, MN, 55155; 651-201-6223), or their successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services provided under this grant contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Grantee's Authorized Representative is Jim Green (General Manager; Duluth Steam, One Lake Place, Duluth, Minnesota 55802; 218-723-3601). If the Grantee's Authorized Representative changes at any time during this grant contract, the Grantee must immediately notify the State.

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

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

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

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

7.4 **Grant Contract Complete.** This grant contract contains all negotiations and agreements between the

State and the Grantee. No other understanding regarding this grant contract, whether written or oral, may be used to bind either party.

8 Liability

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

9 State Audits

Under Minn. Stat. § 16C.05, subd. 5, the Grantee's books, records, documents, and accounting procedures and practices relevant to this grant contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant contract.

10 Government Data Practices and Intellectual Property

10.1. **Government Data Practices.** The Grantee and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Grantee or the State.

If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released.

10.2. **Intellectual Property Rights.** The Grantee shall own all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the WORKS and DOCUMENTS. WORKS shall mean all inventions, improvements, or discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks, conceived, reduced to practice, created, or originated by the Grantee, its employees, and subcontractors, either individually or jointly with others, in the performance of this Contract. WORKS shall include the DOCUMENTS. The DOCUMENTS are the originals of any databases, computer programs, reports, notes, or other materials and documents, whether intangible or electronic forms, prepared by the Grantee, its employees, or subcontractors, in the performance of this Contract. The DOCUMENTS shall be the exclusive property of the Grantee. The State agrees to, and hereby does, assign all rights, title, and interest it may have in the WORKS and the DOCUMENTS to the GRANTEE. The State shall, at the request of the Grantee, execute all papers and perform all other acts necessary to transfer or record the Grantee's ownership interest in the WORKS and DOCUMENTS.

(1) **Obligations.** The Grantee represents and warrants to the State that the WORKS and DOCUMENTS do not and shall not infringe upon any intellectual property rights of others. The Grantee shall indemnify, defend, and hold harmless the State, at Grantee's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the WORKS or DOCUMENTS infringe upon intellectual property rights of others. The Grantee shall be responsible for payment of any and all such claims, demands, obligations, liabilities,

costs, and damages including, but not limited to, attorney fees. If such a claim or action arises, or in the Grantee's or the State's opinion is likely to arise, the Grantee shall, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing WORKS or DOCUMENTS as necessary and appropriate to obviate the infringement claim. This remedy of the State shall be in addition to and shall not be exclusive to other remedies provided by law.

(2) **Survivability.** The rights and duties of the State and the Grantee, provided for above, shall survive the expiration or cancellation of this Contract.

11 **Workers' Compensation**

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

12 **Publicity and Endorsement**

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

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

13 **Governing Law, Jurisdiction, and Venue**

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

14 **Termination**

The State may cancel this grant contract at any time, with or without cause, upon 30 days' written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

15 **Data Disclosure**

Under Minn. Stat. § 270.66, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

1. STATE ENCUMBRANCE VERIFICATION

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

Signed: _____

Date: _____

CFMS Grant contract No. B-_____

2. GRANTEE

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

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

3. STATE AGENCY

By: _____

(with delegated authority)

Title: _____

Date: _____

Distribution:

Agency

Grantee

State's Authorized Representative - Photo Copy

Biomass Cofiring Project – Work Plan

This project will provide the full range of resources and infrastructure necessary for Duluth Steam to accomplish a shift of a substantial portion of its fossil fuel inputs to biomass and includes the following activities/tasks:

- a. **Detailed design engineering** of the biomass unloading, storage, and feed systems for the Duluth Steam plant to achieve at least 15% and up to 25% displacement of fossil fuels.
- b. **Specification development** for procurement of equipment and construction of the biomass unloading, storage, and feed systems for the Duluth Steam plant.
- c. **Construction** - structural, mechanical, electrical, and controls - of the biomass unloading, storage, and feed systems for the Duluth Steam plant.
- d. **Commissioning** of the biomass system and emissions testing to demonstrate results of the fossil fuel displacement.
- e. **Development of a biomass fuel market** including logistics planning, vendor selection, and contract development.

Our goal is to complete all aspects of the project by December 15, 2014 so that biomass is being co-fired to meet the system's peak heating system demands in the winter of 2014-2015.

a. Detailed design engineering of the biomass unloading, storage, and feed systems for the Duluth Steam plant to achieve at least 15% and up to 25% displacement of fossil fuels.

Duluth Steam staff possesses broad experience in biomass utilization. Having operated a biomass-fired combined heat and power (CHP) facility for more than 10 years has provided significant insight into the critical success factors for biomass energy implementation. The Duluth Steam team is well prepared to direct and make experience-based decisions regarding means of implementation and equipment selection for the biomass unloading, storage, and feed systems for the Duluth Steam plant. There will be a significant expenditure of manpower on the part of the Duluth Steam team.

Duluth Steam does not have in-house resources to perform detailed design engineering activities and procurement and construction specification development. This work will be performed by an engineering firm selected by the Duluth Steam team based on an RFP process conducted by Duluth Steam.

The detailed engineering is expected to be completed 75 days from the release of the engineering firm to start work. Duluth Steam plans to release this work on or before April 1, 2014. This work is expected complete by June 15, 2014.

b. Specification development for procurement of equipment and construction of the biomass unloading, storage, and feed systems for the Duluth Steam plant.

It is likely that the engineering firm selected to perform the detailed engineering of the biomass unloading, storage, and feed systems for the Duluth Steam plant will also develop the equipment procurement specifications and the construction specifications.

These specifications will be developed by the engineering firm under the direction and guidance of the Duluth Steam staff and will be of sufficient detail to permit competitive bidding of the equipment procurement and construction of the system.

Specification development will be completed in parallel with the detailed engineering work and the competitive bid packages for equipment procurement and for construction will be released on or before July 1, 2014.

c. Construction – structural, mechanical, electrical, and controls - of the biomass unloading, storage, and feed systems for the Duluth Steam plant.

Given the small land area available on the Duluth Steam plant site, construction site logistics and space for the new biomass unloading, storage and feed system will be challenging. In addition, the installation must be completed while the facility remains in full operation to meet the reduced summer steam load. Duluth Steam staff will provide project management and coordination support throughout the construction phase to facilitate effective and timely completion of the construction phase.

It is expected that equipment procurement lead times will drive the construction schedule which will allow structural modifications required for the new equipment to be performed while the equipment is being fabricated by suppliers for delivery to the site.

This project will provide construction jobs for a variety of craft including iron workers, millwrights, electricians, and instrumentation and controls technicians.

Construction is expected to be completed by October 15, 2014.

d. Commissioning of the biomass system and emissions testing to demonstrate results of the fossil fuel displacement.

When the system construction and installation is substantially complete, the plant staff will undertake a commissioning program to test and confirm the system is prepared for turnover for operation. This will include a step-by-step equipment testing and verification regimen. This commissioning is typically done prior to demobilization of construction contractors so that any deficiencies can be remedied during the commissioning phase. Duluth Steam staff will be supported by project management and system/startup engineering resources from Ever-Green Energy, the operator of the Duluth Steam system.

When the system has been verified fully operational, testing of the emissions from the boilers will be performed to demonstrate the results of the biomass fuel storage and feed system. This testing is expected to be done in conjunction with the annual environmental performance testing that is done each year in December when high boiler loads are able to be achieved.

This phase is expected to be fully completed by December 15, 2014.

e. Development of a biomass fuel market including logistics planning, vendor selection, and contract development.

A separate, yet related activity is the development of a reliable biomass fuel feedstock source and the related logistics (processing, transportation, offsite storage, etc.). These aspects are crucial to the successful implementation of biomass fuels which are notorious for inconsistencies in feedstock quality and for challenges with handling and transportation. The evaluation of the capabilities of biomass market participants, the development of fair and sustainable pricing agreements and the building of relationships which provide all parties confidence in participating in the newly-established biomass market are all critical to success. While the market in Duluth is likely to differ from St Paul's market, Ever-Green Energy's experience in establishing a biomass fuels market (roughly ten times the size of the

anticipated Duluth market) will be brought to bear. Ever-Green Energy's staff with over 10 years of biomass experience in the Saint Paul biomass market will be very relevant in establishing the Duluth market. Duluth Steam will utilize key, experienced staff from Ever-Green Energy in Saint Paul to spearhead this work in Duluth. This work will be targeted to be completed such that deliveries of biomass fuel are ready to be delivered by October 15, 2014 to support commissioning efforts.

Duluth Steam Biomass Co-Firing Project

