NOTICE OF AWARD OF CONTRACT

TO:
Ever-Green Energy, LLC
345 Saint Peter Street,
suite 1350
Saint Paul, MN 55102

DATE ISSUED: January 13, 2015
PROJECT NO: 696-13-2

CURRENT CONTRACT NO:

CONTRACT TITLE: DES - District Energy Services

PRIOR CONTRACT NO:

THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

Your firm is awarded the above referenced contract in accordance with the response submitted by you on March 20, 2014. The contract term covered by this Notice of Award is effective IMMEDIATELY and expires on November 30, 2019.

The contract documents consist of the terms and conditions of Agreement No. 696-13-2, including any exhibits, attached or amendments thereto.

CONTRACT PRICING:

1) REFER TO THE AGREEMENT (ATTACHED)

2) PRICING FIRM UNTIL NOVEMBER 30, 2017. ONE 5% PRICE ADJUSTMENT THEREAFTER.

ATTACHMENTS:

AGREEMENT WITH CONTRACTOR

EMPLOYEES NOT TO BENEFIT:

NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

VENDOR CONTACT: MICHAEL AHERN
TELEPHONE NO.: 651-925-8251
EMAIL ADDRESS: michael.ahern@evergreenenergy.com

VENDOR PAYMENT TERMS: NET 30 DAYS

COUNTY CONTACT: CHRIS SCMERS
TELEPHONE NO.: 703-228-7514
EMAIL ADDRESS: csomers@arlingtonva.us

CONTRACT AUTHORIZATION

Kryshna Hepler
Date: 1/13/2015
Kryshna Hepler, OPB
Procurement Officer

DISTRIBUTION

VENOR: 1
BID FOLDER: 2
AGREEMENT NO. 696-13-2

This Agreement (hereinafter "Agreement") is made, on the date of execution by the County, between Ever-Green Energy, 345 St. Peter Street, suite 1350, Saint Paul, MN 55102 ("Contractor") a Minnesota Corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. **CONTRACT DOCUMENTS**
   The Contract Documents consist of the following:

   Agreement No. 696-13-2
   Exhibit A (Scope of Services)
   Exhibit B (Contract Pricing)

   Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement shall prevail over the other Contract Documents. The Contract Documents shall be complementary to each other and if there are any conflicts the most stringent terms or provisions shall prevail.

   The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties’ agreement which is not contained in the Contract Documents. The Contract Documents may be referred to herein below as the "Contract".

2. **SCOPE OF WORK**
   The Contractor agrees to perform the services described in the Contract Documents (hereinafter "the Work"), especially in Exhibit A. The primary purpose of the Work is to acquire consulting services to assist the County with issues related to planning for, installing, and operating district energy systems. The Contract Documents set forth the minimum work estimated by the County and the Contractor to be necessary to complete the Work. It shall be the Contractor’s responsibility, at its sole cost, to provide the specific services sufficient to fulfill the purposes of Work set forth in the Contract Documents. Nothing in the Contract Documents shall be construed to limit the Contractor’s responsibility to manage the details and execution of the Work.

3. **STANDARD OF CARE**
   In the performance or furnishing of professional services hereunder, the Contractor shall ensure that it and all its agents and employees exercise the degree of skill and care normally accepted and procedures by members of the same profession currently practicing under similar conditions in the same locality ("Customary Standard of Care").
4. **RESPONSIBILITY OF THE CONTRACTOR**
The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all materials produced and other services furnished by the Contractor under this Agreement.

5. **RESPONSIBILITY FOR CLAIMS AND LIABILITIES**
The County’s review, approval, or acceptance of any services required under this Contract shall not be construed to operate as a waiver by the County of any rights or of any cause of action arising out of the Contract. The Contractor shall be and remains liable to the County for the accuracy and competency of plans, specifications, or other documents, within the Customary Standard of Care.

6. **CONTRACT TERM**
The Work shall commence upon execution of this Agreement by the County and shall continue until November 30, 2019 (“Contract Term”), subject to any modifications as provided for in the Contract Documents.

7. **CONTRACT AMOUNT**
The County will pay the Contractor in accordance with the terms of the Payment paragraph below, and Exhibit B for the Contractor’s completion of the Work described and required in the Contract Documents. The Contractor agrees that it shall complete the Work for the total amount specified in this section (“Contract Amount”) unless such amount is modified as provided in this Agreement.

8. **PRICE ADJUSTMENTS**
The Contract unit prices shall remain firm until November 30, 2017. Thereafter each unit price will be increased by 5%, and such increased unit prices shall be fixed for the remainder of the Contract Term.

9. **PAYMENT**
Within ten (10) days after the last day of each month the Contractor shall submit, for approval by the Project Officer, an invoice describing the total Work done if any, by Task, during the preceding month. The Project Officer shall either approve the invoice or require corrections. The County will pay the Contractor within thirty (30) days after the date of receipt of a correct (as determined by the Project Officer) invoice approved by the Project Officer. The amount paid shall be based on the estimate of the percentage of the total Work under each Task completed during the month, subject to the Project Officer’s acceptance of the Work and the estimate. If the Contractor has been paid ninety percent (90%) of the Contract Amount for any Task and Work under that Task is not complete, the remaining amount due for that Task will be paid to the Contractor only after all Work on that Task is completed. The total amount paid for each Task shall not exceed the amount allocated for the Task, regardless of the number of hours spent or the amount of expenses incurred by the Contractor in the performance of the Work. The number of the Purchase Order by which authority shipments have been made or services performed shall appear on all invoices.

10. **ADDITIONAL SERVICES**
The Contractor shall not be compensated for any goods or services provided except those included in Exhibit A and included in the Contract Amount unless those goods or services are covered by a written amendment to this Contract signed by the County and the Contractor, and a County Purchase Order is issued covering the expected cost of such services.

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Additional services agreed upon by the parties will be billed at the rates set forth in Exhibit B unless otherwise agreed by the parties in writing.

11. **REIMBURSABLE EXPENSES**
No expenses except those identified in this Contract as project related expenses will be reimbursed if incurred without the prior written approval of the County and the issuance of a County purchase order detailing the specific expenses to be incurred by the Contractor and their estimated amount. Payment for approved reimbursable expenses will be made within thirty (30) days after receipt by the Project Officer of a correct invoice identifying the nature of the expense. Reimbursable expenses allowed shall be charged to the County on a unit price basis at the Contractor's cost. All amounts paid for reimbursable expenses shall be considered part of the Contract Amount.

The total amount paid for project related expenses shall not exceed the amount shown in Exhibit B.

12. **REIMBURSABLE TRAVEL-RELATED EXPENSES**
No reimbursable travel-related expenses shall be allowed for employees of firms located within the greater Baltimore-Washington Metropolitan Area, as defined by the United States Office of Management and Budget (OMB).

13. **PROJECT OFFICER**
The performance of the Contractor is subject to the review and approval of the County Project Officer ("Project Officer") who shall be appointed by the Director of the Arlington County Department of Parks and Recreation. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its work pursuant to the Contract Documents.

14. **ADJUSTMENTS FOR CHANGE IN SCOPE**
The County may order changes in the Work within the general scope of the Work consisting of additions, deletions or other revisions. No claim may be made by the Contractor that the scope of the work or that the Contractor's services have been changed unless such adjustments have been made by a written amendment to the Contract signed by the County and the Contractor. If the Contractor believes that any particular work is not within the scope of the Work or is a material change, the Contractor must immediately notify the Project Officer after the change or event occurs and within ten (10) calendar days thereafter must provide written notice to the Project Officer.

15. **PAYMENT OF SUBCONTRACTORS**
The Contractor is obligated to ensure that its subcontractors utilized in fulfillment of the Work are promptly paid for their goods and services rendered to the Contractor. The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid, except for amounts withheld as allowed by law. Unless otherwise provided under the terms of this Contract, interest shall accrue on such outstanding balances at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.
The Contractor’s obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge.

16. NON-APPROPRIATION
All funds for payments by the County to the Contractor pursuant to this Contract (if any, and none are expected) are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia. In the event of non-appropriation of funds by the County Board of Arlington County, Virginia, for the goods or services provided under this Contract or substitutes for such goods or services which are as advanced or more advanced in their technology, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Contract beyond the date of termination specified in the County’s written notice.

17. REPLACEMENT OR AUGMENTATION OF KEY PERSONNEL AND SUBCONTRACTORS
The key personnel and sub-contractors submitted by the Offeror in its Proposal are considered essential to the Offeror’s qualifications and may not be replaced, substituted or augmented after qualification of the Offeror’s proposal without prior written approval of the County. A request to replace or substitute any key personnel or subcontractor must be submitted to and approved by the County prior to substitution or augmentation.

18. PROJECT STAFF
The County will have the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor through the duration of the contract. If the County reasonably rejects staff or subcontractors pursuant to this section, the Contractor must provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor’s employees, and employees of any of its subcontractors, shall be the sole responsibility of the Contractor.

19. FAILURE TO DELIVER
In case of the Contractor’s failure to deliver services in accordance with the Contract terms and conditions, the County, after due oral or written notice to the Contractor, may procure the services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs; provided, that if public necessity requires the use of materials or supplies not conforming to the specifications, they may be accepted and payment therefore shall be made at a reduced price to be determined by the County in its sole discretion. This remedy shall be in addition to any other remedies which the County may have.

20. SUPERVISION BY CONTRACTOR
The Contractor shall at all times enforce strict discipline and good order among the workers performing under this Contract, and shall not employ on the work any person not reasonably proficient in the work assigned.

21. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED
During the performance of this Contract, the Contractor agrees as follows:
a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an Equal Opportunity Employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

d. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.

e. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

22. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED
In accordance with § 2.2-4311.1 of the Code of Virginia, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract for goods and/or services in the Commonwealth, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.

23. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR
During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor by Arlington County in accordance with the Arlington County Purchasing Resolution, the employees of which Contractor are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

24. SAFETY
The Contractor shall comply with, and ensure that the Contractor's personnel and subcontracted personnel comply with, all current applicable local, state and federal policies, regulations and standards relating to safety and health, including, by way of illustration and not limitation, the standards of the Virginia Occupational Safety and Health program of the Department of Labor and Industry for General
Industry and for the Construction Industry, the Federal Environmental Protection Agency standards and the applicable standards of the Virginia Department of Environmental Quality.

25. **VIRGINIA UNIFORM STATEWIDE BUILDING CODE**
All improvements or construction of County buildings and facilities shall be designed in compliance with the most current edition of the Virginia Uniform Statewide Building Code (VUSBC). The cover sheet of all plans developed shall clearly indicate this requirement and shall indicate the applicable edition of the VUSBC utilized by the designer.

25. **ADA COMPLIANCE**
The Contractor shall ensure that all services provided under this Agreement are completed in accordance with the requirements of the Americans with Disabilities Act (ADA), and any other applicable regulations and standards. The parties agree that ADA compliance is a vital part of this contract.

The Contractor shall monitor Work performed by the construction contractor during the construction phase, and inform the County and construction contractor of any Work performed that does not conform with the ADA or other applicable requirements, to enable corrective action to be taken.

The Contractor shall defend and hold the County harmless from any expense or liability arising from the Contractor’s non-compliance with accessibility requirements under the ADA, and other applicable regulations and standards, under this Agreement. The Contractor shall be responsible for all costs related to permitting delays, redesign, corrective Work, and litigation relating to such non-compliance.

Neither the Arlington County Inspection Services Division, nor any County staff and/or their third party inspection services, are responsible for verifying the design is in compliance with Contract Documents, the ADA, or other applicable requirements.

27. **TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT: CURE**
The Contract shall remain in force for the Contract Term and until the County determines that all of the following requirements and conditions have been satisfactorily met: the County has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, the County shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work, as determined by the County in its discretion.

If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within not more than sixty (60) days before termination of the Contract will take effect ("Cure Period"). If the Contractor fails to cure within the Cure Period or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may not apply for compensation for Contract services satisfactorily performed by the Contractor ("Termination Costs").

If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from the County to the Contractor (unless the County in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.
Upon any termination pursuant to this section, the Contractor shall be liable to the County for all costs incurred by the County after the effective date of termination, including costs required to be expended by the County to complete the Work covered by the Contract, including costs of delay in completing the Work or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. Such costs shall be promptly paid by the Contractor to the County upon demand by the County. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to the County, and the County shall be entitled to recover, all damages to which the County is entitled by this Contract or by law, including, and without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by the County to the Contractor under the Contract and all attorney fees and costs incurred by the County to enforce any provision of this Contract.

Except as otherwise directed by the County in the notice, the Contractor shall stop work on the date of receipt of notice of termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor.

In the event any termination for cause, default, or breach shall be found by any court of competent jurisdiction to be improper or invalid, then such termination shall be deemed to have been a termination for convenience.

28. **TERMINATION FOR THE CONVENIENCE OF THE COUNTY**

The performance of work under this Contract may be terminated by the County's Purchasing Agent in whole or in part whenever the Purchasing Agent shall determine that such termination is in the County's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least sixty (60) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective.

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all designated work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the County; and terminate all vendors and subcontracts, and settle all outstanding liabilities and claims.

29. **INDEMNIFICATION**

The Contractor covenants for itself, its employees, and subcontractors to save, defend, hold harmless and indemnify the County Board of Arlington County, Virginia, and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the “County” for purposes of this section) from and against any and all claims made by third parties or by the County for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney’s fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor’s acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the work called for by the Contract Documents. This duty to save, defend, hold
harmless and indemnify shall survive the termination of this Contract. If, after notice by the County, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the County for any and all expenses, including, but not limited to, reasonable attorneys' fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the County and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

30. INTELLECTUAL PROPERTY INDEMNIFICATION
The Contractor warrants and guarantees that no intellectual property rights (including, but not limited to, copyright, patent, mask rights and trademark) of third parties are infringed or in any manner involved in or related to the services provided hereunder.

The Contractor further covenants for itself, its employees, and subcontractors to save, defend hold harmless, and indemnify the County, and all of its officers, officials, departments, agencies, agents, and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by the County. If the Contractor, or any of its employees or subcontractors, uses any design, device, work, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract Amount includes all royalties, licensing fees, and any other costs arising from the use of such design, device, work, or materials in any way involved with the Work. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after Notice by the County, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the County for any and all expenses, including but not limited to, reasonable attorneys' fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the County and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

31. OWNERSHIP AND RETURN OF RECORDS
This Contract confers no ownership rights to the Contractor nor any rights or interests to use or disclose the County's data or inputs.

The Contractor agrees that all drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written or oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of the County's request for services under this Contract, are the exclusive property of the County ("Record" or "Records"), and all such Records shall be provided to and/or returned to County upon completion, termination, or cancellation of this Contract. The Contractor shall not use, willingly allow, or cause such materials to be used for any other purpose other than performance of all obligations under the Contract without the written consent of the County. Additionally, the Contractor agrees that the Records are confidential records and neither the Records nor their contents shall be released by the Contractor, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the Project Officer or his or her designee. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Officer or his or her designee for response. At the County's request, the Contractor shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at the County's request, shall destroy all computer records created as a result of the County's request for services pursuant to this Contract.
The Contractor agrees to include the provisions of this section as part of any contract or agreement the Contractor enters into with subcontractors or other third parties for work related to work pursuant to this Contract.

No termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating this section of the Contract.

32. **CONFIDENTIAL INFORMATION**
The Contractor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all County information obtained as a result of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, addresses, dates of birth, other contact information or medical information about a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Contractor shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement.

33. **ETHICS IN PUBLIC CONTRACTING**
This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as any state or federal law related to ethics, conflicts of interest, or bribery, including by way of illustration and not limitation, the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-43B et seq.). The Contractor certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

34. **COUNTY EMPLOYEES**
No employee of Arlington County, Virginia, shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

35. **FORCE MAJEURE**
The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, acts of terrorism, wars, or an act of God beyond control of the Contractor, and outside and beyond the scope of the Contractor's then current, by industry standards, disaster plan, that make performance impossible or illegal, unless otherwise specified in the Contract.

The County shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond control of the County that make performance impossible or illegal, unless otherwise specified in the Contract.

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36. **AUTHORITY TO TRANSACT BUSINESS**
   The Contractor shall pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Contract Term of this Contract. A contract entered into by a contractor in violation of this requirement is voidable, without any cost or expense, at the sole option of the County.

37. **RELATION TO COUNTY**
   The Contractor is an independent contractor and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of the County. The County will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Furthermore, the County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the County for its employees.

38. **ANTITRUST**
   By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the County all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods or services purchased or acquired by the County under this Contract.

39. **REPORT STANDARDS**
   Reports or written material prepared by the Contractor in response to the requirements of this Contract or a request of the Project Officer shall, unless otherwise provided for in the Contract, meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Project Officer, and shall be submitted for advance review and comment by the Project Officer. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with these requirements shall be borne by the Contractor.

   When submitting documents to the County, the Contractor shall comply with the following guidelines:

   a. All submittals and copies shall be printed on at least thirty percent (30%) recycled-content and/or tree-free paper;
   b. All copies shall be double-sided;
   c. Report covers or binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of report pages (reports with glued bindings that meet all other requirements are acceptable);
   d. The use of plastic covers or dividers should be avoided; and Unnecessary attachments or documents not specifically asked for should not be submitted, and superfluous use of paper (e.g. separate title sheets or chapter dividers) should be avoided.

40. **AUDIT**
   The Contractor agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment. The County or its authorized agents shall have full access
to and the right to examine any of the above documents during this period and during the Contract Term. If the Contractor wishes to destroy or dispose of records (including confidential records to which the County does not have ready access) within five (5) years after final payment, the Contractor shall notify the County at least thirty (30) days prior to such disposal, and if the County objects, shall not dispose of the records.

41. **ASSIGNMENT**
The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of the County.

42. **AMENDMENTS**
This Contract shall not be amended except by written amendment executed by persons duly authorized to bind the Contractor and the County.

43. **ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES**
Notwithstanding any provision to the contrary herein, no provision of the Arlington County Purchasing Resolution or any applicable County policy is waived in whole or in part.

44. **DISPUTE RESOLUTION**
All disputes arising under this Agreement, or its interpretation, whether involving law or fact, or extra work, or extra time, and all claims for alleged breach of Contract, shall be submitted to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Any such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than sixty (60) days after the Project Officer's written denial of the respective claim. The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Arlington County Purchasing Resolution, is sixty (60) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, which is incorporated herein by reference. A copy of the Arlington County Purchasing Resolution is available upon request from the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, County Manager, County Board, or a court of law.

45. **APPLICABLE LAW, FORUM, VENUE AND JURISDICTION; COMPLIANCE WITH LAW**
This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia and the jurisdiction, forum, and venue for any litigation with respect thereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing the Work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

46. **ARBITRATION**
It is expressly agreed that nothing under the Contract shall be subject to arbitration, and any references to arbitration are expressly deleted from the Contract.

47. **NONEXCLUSIVITY OF REMEDIES**
All remedies available to the County under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to the County at law or in equity.
48. **NO WAIVER**
The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

49. **SEVERABILITY**
The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

50. **NO WAIVER OF SOVEREIGN IMMUNITY**
Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by the County pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of the County. The parties intend for this provision to be read as broadly as possible.

51. **SURVIVAL OF TERMS**
In addition to any numbered section in this Agreement which specifically state that the term or paragraph survives the expiration of termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP AND RETURN OF RECORDS; AUDIT; INTELLECTUAL PROPERTY INDEMNIFICATION; WARRANTY; and CONFIDENTIAL INFORMATION.

52. **HEADINGS**
The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading precedes.

53. **AMBIGUITIES**
Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

54. **NOTICES**
Unless otherwise provided herein, all notices and other communications required by this Contract shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

TO THE CONTRACTOR:

Michael Ahern  
Ever-Green Energy  
345 Saint Peter Street  
Saint Paul, MN 55102
TO THE COUNTY:

Chris Somers, Project Officer
Arlington County, Virginia
2100 Clarendon Blvd.
Arlington, VA 22201

AND

Richard D. Warren, Jr., Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201

55. **NON-DISCRIMINATION NOTICE**
Arlington County does not discriminate against faith-based organizations.

56. **INSURANCE REQUIREMENTS**
The Contractor shall provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force the coverage below prior to the start of any Work under this Contract and upon any contract extension. The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, with a rating of “A-” or better and a financial size of “Class VII” or better in the latest edition of the A.M. Best Co. Guides, and acceptable to the County. The minimum insurance coverage shall be:

a. Workers Compensation - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of $100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker’s Insurance Fund, Towson, MD.

b. Commercial General Liability - $2,000,000 combined single limit coverage with $5,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.

c. Business Automobile Liability - $1,000,000 Combined Single Limit (Owned, non-owned and hired).

d. The Contractor shall carry Errors and Omissions or Professional Liability insurance which will pay for injuries arising out of errors or omissions in the rendering, or failure to render services or perform Work under the contract, in the amount of $1,000,000.

e. Additional Insured - Arlington County, and its officers, elected and appointed officials, employees, and agents shall be named as an additional insureds on all policies except Workers Compensation and Auto and Professional Liability; and evidence of the Additional Insured endorsement shall be typed on the certificate.

f. Cancellation - If there is a material change or reduction in coverage the Contractor shall notify the Purchasing Agent immediately upon Contractor’s notification from the insurer. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced with another
policy consistent with the terms of this Contract, and the County notified of the
replacement, in such a manner that there is no lapse in coverage. Not having the required
insurance throughout the Contract Term is grounds for termination of the Contract.
g. Any insurance coverage that is placed as a “claims made” policy must remain valid and in
force, or the Contractor must obtain an extended reporting endorsement consistent with
the terms of this Contract, until the applicable statute of limitations has expired, such date
as determined to begin running from the date of the Contractor’s receipt of final payment.
h. Contract Identification - The insurance certificate shall state this Contract’s number and title.

The Contractor must disclose the amount of any deductible or self insurance component applicable
to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other
policies required herein, if any. The County reserves the right to request additional information to
determine if the Contractor has the financial capacity to meet its obligations under a deductible.
Thereafter, at its option, the County may require a lower deductible, funds equal to the deductible
be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of
the deductible to ensure protection for the County.

The Contractor shall require all subcontractors to maintain during the term of this Contract,
Commercial General Liability Insurance, Business Automobile Liability insurance, and Workers'
Compensation insurance in the same form and manner as specified for the Contractor. The
Contractor shall furnish subcontractors’ certificates of insurance to the County immediately upon
request by the County.

No acceptance or approval of any insurance by the County shall be construed as relieving or excusing
the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the
Contract Documents.

The Contractor shall be responsible for the work performed under the Contract Documents and
every part thereof, and for all materials, tools, equipment, appliances, and property of any
description used in connection with the work. The Contractor assumes all risks for direct and
indirect damage or injury to the property or persons used or employed on or in connection with the
Work contracted for, and of all damage or injury to any person or property wherever located,
resulting from any action, omission, commission or operation under the Contract, or in connection in
any way whatsoever with the contracted work.

The Contractor shall be as fully responsible to the County for the acts and omissions of its
subcontractors and of persons employed by them as it is for acts and omissions of persons directly
employed by it.

Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by
means of self insurance for all or any part of the insurance required, provided that the Contractor
can demonstrate financial capacity and the alternative coverages are submitted to and acceptable to
the County. The Contractor must also provide its most recent actuarial report and provide a copy of
its self insurance resolution to determine the adequacy of the insurance funding.

57. ACCESSIBILITY OF WEB SITE
If any work performed under this Contract results in design, development, maintenance or
responsibility for content and/or format of any County websites, or County’s presence on other third
party websites, the Contractor shall perform such work in compliance with the requirements set

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forth in the U.S. Department of Justice document entitled “Accessibility of State and Local Government Websites to People with Disabilities.” The document is located at:
http://www.ada.gov/websites2.htm

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

AUTHORIZED SIGNATURE: [Signature]
NAME: RICHARD D. WARREN, JR.
TITLE: PURCHASING AGENT
DATE: 1/12/2015

EVERGREEN ENERGY

AUTHORIZED SIGNATURE: [Signature]
NAME AND TITLE: SVP, Project Development
DATE: 12-29-14
Exhibit A
Scope of Services

Scope of Services
Work for any given assignment may include feasibility studies, facility assessments, design services for new construction, alterations, renovation, maintenance and repair projects to include project evaluation, planning, and engineering services (civil, structural, MEP, etc.); incidental to the project, as well as, preparation of construction documents and construction estimates, geotechnical and boring, and other necessary reports. The selected contractor shall not be asked to provide, and will not provide, legal analysis, advice, or recommendations as part of its work.

The following services are anticipated to be required:

1. **MEETINGS AND PRESENTATIONS**
   During the course of a given project, the Contractor may be directed by the County to develop and conduct presentations and work sessions with citizen groups, civic associations and State and County officials. Projects may also include coordination with departments internal to the County.

2. **INTEGRATED ENERGY MASTER PLANS (IEMPs)**
   The Contractor(s) shall evaluate an integrated approach to efficient energy delivery and usage, increased energy efficiency, and optimized energy supply for the relevant Arlington County neighborhood being analyzed. The feasibility of the integrated approach will be assessed primarily on energy-related investment returns, but also on the competitiveness of neighborhood as a whole, energy supply reliability, and the environmental impact in terms of avoided GHG emissions.

   The IEMP shall propose and analyze options to dramatically reduce the environmental impact of energy use while enhancing comfort, convenience, and cost for building owners. Following the County Board's acceptance of the CEP, the indicative target is that the energy use will be 60% less than current practice by 2050, with GHG levels being at least 70% less. This work may include, but is not limited to, the following tasks:

   a. The Contractor(s) shall facilitate meetings with the County staff and potential district energy customers to discuss details of the project, coordination efforts, and updates;
   b. The Contractor(s) shall collect data on existing buildings and review current energy loads;
   c. The Contractor(s) shall assess existing infrastructure & building equipment in existing buildings;
   d. The Contractor(s) shall develop load forecasts assuming CEP energy efficiency goals;
   e. The Contractor(s) shall screen and select potential central utility plant sites;
   f. The Contractor(s) shall assess energy supply alternatives, e.g., solar photovoltaics and solar thermal;
   g. The Contractor(s) shall evaluate energy efficiency upgrades to buildings;
   h. The Contractor(s) shall conduct financial planning and develop financial model for the District Energy Entity and individual buildings. Assess financial and other market incentives. Provide summary of financial analysis results;
i. The Contractor(s) shall evaluate energy and climate performance of proposed district energy, energy efficiency, and renewable options, compared to "business as usual"; and
j. The Contractor(s) shall develop a list of recommendations, which will not include legal advice, and a final report.

3. **INTERCONNECTION AND INTEROPERABILITY STANDARDS AND GUIDELINES**
The Contractor(s) shall develop infrastructure interconnection and interoperability standards and guidelines, which will be reviewed and approved by the County. At a minimum these guidelines shall include pipe size, connection type, pipe depth, pressure, and other relevant information necessary to establish the requirements for the guidelines.

This work may include, but is not limited to, the following tasks:

   a. Research and summarize current industry best practices on infrastructure interconnection and interoperability standards and guidelines, in the US and Europe;
   b. Create a set of infrastructure interconnection and interoperability standards and guidelines specific to Arlington and/or specific areas identified for a DE system; and
   c. Train County staff on the interoperability standards and guidelines.

4. **RESEARCH INDIVIDUAL METERING SYSTEMS FOR MULTIFAMILY TYPE RESIDENTIAL BUILDINGS**
While the norm is to have DE metered at the building level, the County is interested in researching metering at the residential unit level. The County is interested in identify best practices regarding individually metering residential units for DE. The contractor shall research best practices on individual metering of DE systems.

This work may include, but is not limited to, the following tasks:

   a. Researching industry best practices on individually metering residential units for DE; and
   b. Creating a set of standards and guidelines for DE metering of residential units in the County.

5. **RESEARCH ON LINKAGE BETWEEN STREETCARS AND DE/CHP SYSTEMS**
The contractor shall investigate the feasibility of using CHP systems to power the County’s proposed streetcar lines.

This work may include, but is not limited to, the following tasks:

   a. Researching industry best practices on linking electric streetcar and DE systems;
   b. Creating a set of standards and guidelines to link electric streetcar and DE systems; and
   c. Work with Dominion VA Power to facilitate the link between electric streetcar and DE systems.

6. **RESEARCH INFRASTRUCTURE BEST PRACTICES AND TECHNOLOGIES**
The County would like to understand best practices for planning and installing district energy infrastructure, given that many of the areas in Arlington that appear most promising for district energy are already built upon and contain utilities underground. This work may include, but is not limited to, the following tasks:

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a. Researching industry best practices for DE system infrastructure installation;
b. Creating a set of standards and guidelines for DE system infrastructure installation; and
c. Training County staff on the DE system infrastructure installation standards and guidelines.

7. **LIFE CYCLE COST ANALYSIS**
At the request of the County, the Contractor shall submit the overall costs of project alternatives, highlighting the plan with the lowest life cycle cost. This would allow the County to select the design that ensures the facility will provide the lowest overall cost of ownership consistent with its quality and function. The Contractor shall analyze and present to the County the economic effects of alternative designs of facilities and quantify these effects and express them in dollar amounts that are based on factual researched data.

**SELECTION PROCESS FOR TASK ORDERS**
The following are procedures that the County will follow to assign work to selected firms. However, the County reserves the right to issue separate solicitations, waive requirements set forth below in part or whole, if it is determined in writing, by the County Purchasing Agent that is in the best interest of the County.

a. For project work assignments where the design fee will not exceed $100,000 the County, in its sole discretion, may select the Contractor determined most qualified and best suited for that particular assignment.

b. For work assignment whose projected value would exceed $100,000 the Project Officer will develop a written scope of work and evaluation criteria to be used for determination of the most qualified and best suited firm for that particular assignment and will forward it to all firms approved for work under the applicable Specialization Area.

c. The scope of work will include a description of the project, the deliverable items, and the estimated time limit for the completion and identify all applicable permits, licenses, and approvals requirements.

d. The Contractor (s) shall submit a proposal for the work within ten (10) calendar days (unless the assignment specifies a different deadline) of receiving a request for proposal from the County. Proposals shall include the firms proposed methodology to perform the work, identify key issues and propose solutions, propose the specific project team and provide their resumes that highlights their key qualifications and skills and describe their responsibility.

e. The County will review and evaluate all the proposals and rank each submission.

f. The following criteria will be utilized by Arlington County at its sole discretion when evaluating individual task proposals and ranking each submission:

1) The ability to provide the specific needs for the assignment as determined by the Arlington County Project Manager or their designee.
2) The availability of the firm and subcontractor’s staff and their ability to meet a project’s schedule requirements.
3) The firm’s responsiveness to the County request.
4) Potential conflict of interest related to project design or construction.

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g. The top ranking firm will then be required to submit a binding Fee and Schedule Proposal. The proposal shall consist of a not-to-exceed amount, derived from the fully burdened hourly rates identified in the contract along with the identification of all required tasks and the estimated number of hours necessary to complete the entire assignment. The County then will engage in negotiation with the top ranking firm and if the negotiation fails to bear result, then the County will formally terminate the negotiation process and request a non-binding fee and schedule proposal from the 2nd ranking firm and enter in formal negotiation process. The procedures will be followed until the County successfully negotiates a suitable project cost and schedule.

h. The Contractor will only be authorized to proceed with work on an assignment as approved by the Project Officer and upon receipt of a County Purchase Order.

i. The Contractor shall name a designated representative who shall be the sole point of contact for the project. The designated individual shall be experienced in the categories of work listed for the project.

j. The Contractor shall be responsible for securing all necessary permits, licenses, and approvals from local, state and Federal authorities. The County will be responsible for payment of permit fees.
The Contractor will be paid in accordance with the following fully loaded hourly rates:

<table>
<thead>
<tr>
<th>Role</th>
<th>Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Leadership</td>
<td>$275</td>
</tr>
<tr>
<td>Senior Vice President</td>
<td>$240</td>
</tr>
<tr>
<td>Level III Engineering Management</td>
<td>$227</td>
</tr>
<tr>
<td>Level II Engineering Management</td>
<td>$215</td>
</tr>
<tr>
<td>Level I Engineering Management</td>
<td>$200</td>
</tr>
<tr>
<td>Level II Senior Engineer</td>
<td>$188</td>
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<tr>
<td>Level I Senior Engineer</td>
<td>$170</td>
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<tr>
<td>Level II Staff Engineer</td>
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<tr>
<td>Level I Staff Engineer</td>
<td>$140</td>
</tr>
<tr>
<td>Public Relations Director</td>
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<tr>
<td>Level III Associate Engineer</td>
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<tr>
<td>Level II Associate Engineer</td>
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<tr>
<td>Level I Associate Engineer</td>
<td>$75</td>
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<tr>
<td>Technician</td>
<td>$75</td>
</tr>
<tr>
<td>General office</td>
<td>$60</td>
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