

**CITY OF SAINT PAUL  
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT, made and entered into effective April 29, 2021 by and between the City of Saint Paul, Minnesota, a municipal corporation under the laws of the State of Minnesota (the "City") and Environmental Initiative, Inc., a Minnesota nonprofit corporation operating **Project Green Fleet** (the "Contractor").

The City and Contractor, in consideration of the mutual terms and conditions, set forth, below, agree as follows:

Contractor agrees to provide the services comprised of tasks, deliverables, and time lines described in this Agreement.

**Section 1. Time For Completion.**

The services rendered by Contractor shall be commenced upon execution of the Agreement and notification by the City to proceed and will be completed in accordance with the schedule mutually agreed upon with the City.

In the event that there are delays caused by actions of the City or which may be reasonably requested by the Contractor which can change the completion date, Contractor shall request an extension of time for completion of the project. The Project Manager will review the request and may grant to the Contractor such extensions of contract time as may be reasonable.

**Section 2. Project Management.**

The City requires the Contractor to assign specific individuals as principal project members and to assure that the major work and coordination will remain the responsibility of these individuals during the term of the Agreement. Removal of any principal project member without replacement by equally qualified individuals or without the prior written approval of the City is grounds for termination of the Agreement by the City. City approval will not be unreasonably delayed or withheld.

The City has designated Shane Wurst, CFP as the Project Manager for this Agreement, and the individual to whom all communications pertaining to the Agreement shall be addressed. The Project Manager shall have the authority to transmit instructions, receive information, and interpret and define the City's policy and decisions pertinent to the work covered by this Agreement.

Repower/Replacement purchases occurring under this Agreement may be made through issuance of purchase orders. Each purchase order will: 1) clearly articulate the portion that is the financial responsibility of Contractor ("Contractor's Portion"); 2) include itemized equipment expenses; and 3) include Certificate(s) of Conformity as required by the Environmental Protection Agency ("EPA"). Except for Contractor's Portion of Repower/Replacement equipment expenses (which shall in no case be more than 25% of the total cost, or what is otherwise allowable under the grant or other funding source), the City will be responsible for the balance of all costs and expenses of performing the Repower/Replacement under each purchase order.

**Section 3. Responsibilities of Contractor. Contractor will:**

(a) Select equipment of the City's fleet for Repower / Replacement from fleet data provided by the City, in consultation with the City and other resources as Contractor determines is

appropriate. The replacement vehicle, engine, or equipment must continue to perform the same function as before the replacement.

(b) Order and pay Contractor's Portion of the Repower / Replacement equipment, including any additional parts necessary for the successful operation of the equipment.

(c) Provide technical support and monitoring, and address any technical problems that may arise, including arranging for assistance from equipment contractors as deemed appropriate, and to ensure compliance with all applicable laws and guidance related to the Repower / Replacement program.

(d) Coordinate with the City for the purchase and installation of Repower / Replacement equipment and accompanying parts to selected sites(s). The City and Contractor are wholly responsible for completion of the purchase and installation of the repowered/replaced equipment.

(e) Collect required information about operations of the participating vehicles to quantify emission and exposure reductions associated with implementation of the repowered/replaced equipment.

Section 4. City Responsibilities. The City will:

(a) Be responsible for the successful purchase and installation of the repowered / replaced equipment as the fleet operator.

(b) Provide Contractor with sufficient data for each vehicle/engine engaged in the Program as requested by Contractor to select vehicles for Repower / Replacement under this Agreement, and to quantify emission and exposure reductions associated with implementation of the Repower / Replacement equipment.

(c) Consult with Contractor on the selection of equipment for Repower / Replacement and installation as may be reasonably requested by Contractor.

(d) Follow all applicable procurement rules consistent with the State of Minnesota's Cooperative Purchasing Venture (CPV) related to obtaining the agreed upon replacement/repowered equipment/engines.

(e) Pay its portion of the cost of the Repower / Replacement as authorized by the City in writing prior to any purchase or commitment to purchase.

(f) Accept delivery of Repower / Replacement equipment and accompanying parts to selected site(s) for operation on selected vehicles.

(g) Assist as required with the operation and training on the repowered/replaced equipment in accordance with the repowered/replaced equipment's manufacturer recommendations.

(h) Scrap or render permanently disabled or returned to the original manufacturer for remanufacturing to a certified cleaner emission standard all equipment that is repowered/replaced. Drilling a hole in the engine block and manifold while retaining possession of the equipment is an acceptable scrapping method. Evidence of appropriate disposal in

accordance with EPA standards or as required by individual grant terms, including engine serial number of vehicle identification number (VIN), is required.

(i) Operate the repowered/replaced equipment in Minnesota for at least five (5) years, unless physically impossible to do so or prohibitively expensive. If physically impossible to do so or prohibitively expensive, the City will provide written explanation as to why it is physically impossible to do so or prohibitively expensive.

(j) Contact Contractor with any questions or problems relative to the repowered/replaced equipment.

(k) Ensure that it obtains title to the repowered/replaced equipment upon receipt of delivery. Thereafter, the City will operate and be exclusively responsible for maintenance, repair, and other incidents of ownership of the repowered / replaced equipment install in its vehicles. Nothing in this Agreement affects the title to the City's vehicles.

Section 5. Amendment or Changes to Agreement.

A. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by the parties.

B. Modifications or additional schedules shall not be construed to adversely affect vested rights or causes of action which have accrued prior to the effective date of such amendment, modification, or supplement. The term "this Agreement" as used herein shall be deemed to include any future amendments, modifications, and additional schedules made in accordance herewith.

Section 6. Notices.

Except as otherwise stated in this Agreement, any notice or demand to be given under this Agreement must be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications must be addressed as follows:

To the City  
Shane Wurst, CPFP  
Fleet Manager  
891 Dale St N  
Saint Paul, MN 55103

To Contractor:  
Environmental Initiative, Inc.  
211 First Street North  
Suite 250  
Minneapolis, MN 55401

Section 7. Survival of Obligations.

A. The respective obligations of the City and Contractor under these terms and conditions, which by their nature would continue beyond the termination, cancellation, or expiration hereof, shall survive termination, cancellation or expiration hereof.

B. If a court or governmental agency with proper jurisdiction determines that this Agreement, or a provision herein is unlawful, this Agreement or that provision, shall terminate. If a provision is so terminated but the parties legally, commercially, and practicably can continue this Agreement without the terminated provision, the remainder of this Agreement shall continue in effect.

Section 8. Entire Agreement.

It is understood and agreed that this entire Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matters herein.

Section 9. Records, Dissemination of Information.

A. For purposes of this Agreement, the following words and phrases shall have the meanings set forth in this section, except where the context clearly indicates that a different meaning is intended.

“Work product” shall mean any report, recommendation, paper, presentation, drawing, demonstration, or other materials, whether in written, electronic, or other format that results solely from Contractor’s services under this Agreement.

“Supporting documentation” shall mean any surveys, questionnaires, notes, research, papers, analyses, whether in written, electronic, or in other format and other evidences which result solely from Contractor’s services under this Agreement, and which are used to generate any and all work performed and work products generated under this Agreement.

“Business records” shall mean any books, documents, papers, account records and other evidences, whether written, electronic, or in other forma, belonging to Contractor and pertaining to work performed under this Agreement.

B. All deliverable work products and supporting documentation shall be delivered to the City, and shall become the property of the City as delivered with no right, title, or interest in said work products or supporting documentation vesting in Contractor, except as provided in this section. Contractor shall retain the right to all its software, intellectual property and templates that are not a project specific deliverable.

C. The Contractor agrees not to release, transmit, or otherwise disseminate information associated with or generated as a result of the work performed under this Agreement without prior knowledge and written consent of the City.

D. In the event of termination, all work product finished or unfinished, and supporting documentation prepared by the Contractor under this Agreement, shall be delivered to the City by Contractor by the termination date and there shall be no further obligation of the City to Contractor except for payment of amounts due and owing for work performed and expenses incurred to the date and time of termination.

E. The Contractor shall maintain all business records relating to this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such materials available at its office at all reasonable times during this Agreement period and for six (6) years from the date of the final payment under the contract for audit or inspection by the City, the Auditor of the State of Minnesota, or other duly authorized representative.

F. The Contractor agrees to abide strictly by Chapter 13, Minnesota Government Data Practice Act, and in particular Minn. Stat. §§ 13.05, subd. 6 and 11; and 13.37, subd. 1 (b) and Minn. Stat §§ 138.17 and 15.17. All of the data created, collected, received, stored, used, maintained, or disseminated by the Contractor in performing functions under this Agreement is subject to the requirements of the Minnesota Government Data Practices Act and Contractor must comply with those requirements as if it were a governmental entity. If any provision of this Agreement is

in conflict with the Minnesota Government Data Practices Act or other Minnesota state laws, state law shall control.

**Section 10. Human Rights/Affirmative Action/Economic Opportunity.**

Contractors must comply with the City of Saint Paul's Human Rights Department's Affirmative Action Requirements in Employment pursuant to Section 183.04 of the Saint Paul Legislative Code, the Rules Governing Affirmative Requirements in Employment, and Chapter A-12 of the Saint Paul Administrative Code governing workplace conduct. The Contractor agrees to comply with all federal, state and local laws, resolutions, ordinances, rules, regulations and executive orders pertaining to unlawful discrimination on account of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to the same.

**Section 11. Affirmative Action Contract Specifications.**

Every contractor or subcontractor whose total accumulated contract awards from the City of Saint Paul over the preceding twelve months have met or exceeded \$50,000 must complete and submit to the Department an Affirmative Action Program Registration form along with a \$75 registration fee (City of Saint Paul Administrative Code Ordinance 86.06 and City of Saint Paul Legislative Code Ordinance 183.04).

**Section 12. Compliance With Applicable Law.**

The Contractor agrees to comply with all federal, state and local laws or ordinances, and all applicable rules, regulations and standards established by any agency of such governmental units, insofar as they relate to the Contractor's performance of the provisions of this Agreement. It shall be the obligation of the Contractor to apply for, pay for and obtain all permits and/or licenses required.

This Agreement is subject to the terms and conditions of any funding agreements between Contractor and its funders, the requirements of 40 CFR § 30.48, Circular A-110, and other applicable legal requirements.

**Federal Requirements**

The City represents and warrants that it has not been debarred from participating in federal procurements and non-procurement programs. If during the term of the Agreement, the City receives notice that it is or will be debarred from such programs, it will immediately notify Contractor.

City will comply with work hours and safety standards applicable to the City under state or federal laws, regulations, and program requirements.

City agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.

By signing this Agreement, the City certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract or grant, the making of any Federal loan, the entering into of any cooperative agreement, or the

extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

The City will incorporate the requirements of this Agreement into any agreement with a subcontractor to carry out activities pursuant to this Agreement.

Section 13. Conflict of Interest.

Contractor's acceptance of this agreement indicates compliance with Chapter 24.03, City of Saint Paul Administrative Code: "Except as permitted by law, no city official or employee shall be a party to or have a direct financial interest in any sale, lease, or contract with the City. The contractor also affirms that to the best of the Contractor's knowledge, their involvement in this contract does not result in a conflict of interest with any part or entity which may be affected by the terms of this contract. The Contractor agrees that should any conflict or potential conflict of interest become known to the contractor, they will immediately notify the Purchasing Systems Manager of the situation so that a determination can be made about Contractor's ability to continue performing services under this contract.

Section 14. Acts and Omissions.

Each party agrees that it will be responsible for its own acts and omissions and the acts and omissions of its employees, elected officials, and agents as they relate to this Agreement and for any liability resulting therefrom, to the extent authorized by law, and will not be responsible for the acts and omissions of the other party or their employees, elected officials, and agents, or for any liability resulting therefrom. The Parties' liability is governed and limited by the Municipal Tort Claims Act, Minnesota Statutes chapter 466, and other applicable law.

Section 15. Assignment.

The City and Contractor each binds itself and its successors, legal representatives, and assigns of such other party, with respect to all covenants of this Agreement; and neither the City nor the Contractor will assign or transfer their interest in this Agreement without the written consent of the other.

Section 16. Termination.

A. For convenience. Either party may terminate this Agreement by providing 30-days written notice of termination to Contractor or City.

B. With Cause.

City and Contractor reserve the right to terminate this Agreement if the other party violates any of the terms or does not fulfill, in a timely and proper manner, its obligations under this Agreement. In the event that either party exercises its right to terminate under this Section, it shall submit written notice to the other, specifying the nature of the breach and the date by which such breach must be cured. Upon receipt of such notice, the Contractor shall take all actions necessary to discontinue further commitments of funds to the extent that they relate to the terminated portions of this Agreement.

Section 17. Interpretation of Agreement, Venue.

This Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this agreement shall be venued in the District Court of the County of Ramsey, Second Judicial District, State of Minnesota.

Section 18. Independent Contractor.

It is agreed by the parties, that at all times and for all purposes, within the scope of the Agreement resulting from this solicitation, the relationship of the Contractor to the City is that of independent contractor and not that of employee. No statement contained in the specification or resulting Agreement shall be construed so as to find the Contractor an employee of the City, and Contractor shall be entitled to none of the rights, privileges, or benefits of Saint Paul employees.

Section 19. Waiver.

The waiver by the City of any breach under the terms of this Agreement or the foregoing by the City of any of the rights or remedies arising under the terms of this Agreement shall not constitute a waiver of the City's right to any rights and/or remedies with respect to any subsequent breach or default of the terms of the contract. The rights and remedies of the City provided or referred to under the terms of the contract are cumulative and not mutually exclusive.

Section 20. Subcontracting.

The Contractor agrees not to enter into any subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of the City.

Section 21. Force Majeure.

Neither the City nor the Contractor shall be held responsible for performance if its performance is prevented by acts or events beyond the party's reasonable control, including, but not limited to: severe weather and storms, earthquake or other natural occurrences, strikes and other labor unrest, power failures, electrical power surges or current fluctuations, nuclear or other civil military emergencies, or acts of legislative, judicial, executive.

Section 22. Disclaimer of Warranties.

Contractor makes no express or implied warranty of any kind whatsoever with respect to any repowered/replaced equipment, including but not limited to, the merchantability of any repowered/replaced equipment or vehicle, or its fitness for a particular purpose, the design or condition of any repowered/replaced equipment or vehicle the quality or capacity of any repowered/replaced equipment or vehicle, the workmanship in any repowered/replaced equipment or vehicle, or the compliance of any repowered/replaced equipment or vehicle beyond the services provided under this Agreement with the requirements of any law, rule, specification or contract pertaining thereto.

Section 23. Insurance.

Both parties represent and warrant that they have sufficient insurance or self-insurance to meet their respective obligations. Contractor recognizes that the City is self-insured.

Each Party will be responsible for injuries to its own employees. Each Party will maintain workers' compensation insurance or a program of self-insurance covering its own employees *while they are providing assistance pursuant to this Agreement.*

Section 24. Counterparts.

The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.

Section 25. Electronic Signatures.

The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, "electronic signature" also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party's failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

Section 26. Negotiated agreement.

The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

**CITY OF SAINT PAUL**

Jaime Rae Tincher  
Jaime Rae Tincher (Apr 22, 2021 11:13 CDT)  
\_\_\_\_\_  
Mayor or Designee

John McCarthy  
John McCarthy (Apr 21, 2021 20:41 CDT)  
\_\_\_\_\_  
Director, Office of Financial Services

As to form: Adam Niblick  
Adam Niblick (Apr 22, 2021 08:40 CDT)  
\_\_\_\_\_  
Assistant City Attorney

**ENVIRONMENTAL INITIATIVE**

Michael Herley  
By: Michael Herley *MSH*  
Its: Executive Director