

**PROCUREMENT AGREEMENT
BETWEEN
THE STATE OF VERMONT
AND
THE CITY OF MONTPELIER**

THIS AGREEMENT, dated the ___ day of January, 2012, by and between the State of Vermont, acting through its Department of Buildings and General Services (“the State”), and the City of Montpelier, Vermont (“the City”), sometimes referred to collectively as “the Parties” or individually as “Party.”

Recitations

WHEREAS, on June 9, 2011, the Parties executed a Memorandum of Understanding (the “MOU”) that provided, *inter alia*, that the State would replace and update the existing heating system that serves the Capital Complex with a biomass fueled heating boiler plant and related system to be fueled primarily by biomass and use #2 fuel oil as a secondary and emergency fuel; and

WHEREAS, on even date herewith, the parties are entering into a Sub-recipient Agreement (the “Sub-recipient Agreement”) which provides, *inter alia*, for the City’s administration of and the State’s reimbursement from the DOE Grant (as defined in the Sub-Recipient Agreement) and a Thermal Energy Purchase and Sale Agreement (the “Purchase and Sale Agreement”) which provides, *inter alia*, for the sale by the State to the City of the City’s initial allocated share of the State Heat Plant Capacity of 9.71 Million BTU/Hour (the “Initial Contracted Capacity”) and associated Energy (as defined in the Purchase and Sale Agreement); and

WHEREAS, the Sub-recipient Agreement further provides for the allocation of a portion of the DOE Grant for the construction of the State Heat Plant.

NOW THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

Capitalized terms used but not defined herein shall have the meanings given to them in the Purchase and Sale Agreement.

Section 1. Purpose

The purpose of this Agreement is to describe and set forth the terms by which the City will make payment to the State for the Initial Contracted Capacity, which is 24.16% of total State Heat Plant Capacity.

Section 2. Construction Obligations

(a) The State

The State will have the sole responsibility to plan, design, construct and own the State Heat Plant in accordance with its policies and procedures, consistent with good engineering standards to serve the identified needs of the State and City. For its part, the State will update its existing heat plant to a modern biomass fueled facility as described in Section 3 below.

The State will be responsible for obtaining all State and local permits and approvals required for construction and operation of the State Heat Plant. The State is solely responsible for all safety and environmental regulations relating to the construction, operation and maintenance of the State Heat Plant.

(b) The City.

The City will have the sole responsibility to plan, design, construct, own and manage the City Distribution System in accordance with its policies and procedures, consistent with good engineering standards to serve the identified needs of the City and State. Upon completion of construction, the City will own, manage, operate and maintain the steam-to-hot-water energy conversion equipment (thermal conversion unit), which will thereafter be a part of the City's Distribution System. For its part, the City will plan, design, construct, own, operate and maintain the City Distribution System suitable to serving the needs of the City Owned and Served Buildings.

The City Distribution System will consist of the City's piping system and equipment to distribute the hot water including the energy conversion equipment (thermal conversion unit), and all other equipment and machinery necessary to connect and distribute the Energy to the City Owned and Served Buildings.

The City will be responsible for all State and Local permits and approvals for construction of the City Distribution System and for all safety and environmental regulations relating to the construction, operation and maintenance of the City Distribution System.

Section 3. The State Heat Plant

The State Heat Plant will consist of the necessary boilers, boiler auxiliary equipment, fuel conveyance and storage, ash collection and disposal systems, thermal conversion unit(s) (which will be owned, operated and maintained by the City upon the completion of construction), and building structures necessary to the safe and efficient operation and maintenance of a modern steam boiler plant. The State Heat Plant will be designed to primarily be fueled by biomass and use #2 fuel oil as a secondary and emergency fuel source.

The State Heat Plant will be constructed on the site of the State's existing boiler plant behind 120 State Street on the Capital Complex. Two new 600 HP dual fueled boilers, each with a rated capacity of 20.1 Million BTU/hour will be installed. In addition, the newer of the existing oil boilers will be relocated and modified to operate on #2 fuel oil (the existing heat plant currently uses # 6 fuel oil).

A space will be reserved in the new State Heat Plant to accommodate at a later date an additional boiler with a rated capacity of 600 HP as a means to serve long-term growth in the State and City heating loads. The plant design will, to the degree reasonable, incorporate the necessary auxiliary equipment and fuel handling systems for this subsequent Capacity. The steam boilers will be rated to operate at 400 PSIG, but will be operated at no more than 100 PSIG until such time as electric power-producing equipment is installed in the plant. The 400 PSIG rated pressure will support electric generation via a backpressure turbine generator at a later date. The State, in its sole discretion and at its own incremental cost, may elect to add and operate electric generating equipment to the State Heat Plant. The State Heat Plant systems will be designed to deliver energy to the City's Distribution System at 50 PSIG. The total net capacity of the State Heat Plant will be 40.2 Million BTU/hr (not including backup boiler capacity).

Section 4. Cooperation.

- (a) The Parties agree to work together to obtain all necessary federal approvals. The Parties agree to cooperate with each other in obtaining required regulatory permits and approvals.
- (b) Each Party shall provide the other Party with any information that the Party may have that is reasonably required by the other Party in planning, designing, constructing, owning, managing, operating, and maintaining its portion of the Project.
- (c) The State and the City shall mutually agree on the final engineering design of each of the State Heat Plant and the City Distribution System, but shall only have that right to the extent required to ensure compatibility between the State Heat Plant and the City Distribution System and the timing of the estimated initial

delivery of Energy to the City, whether for purposes of start-up, testing or otherwise.

- (d) Each Party will exercise good faith toward the other in connection with the tasks required by each to advance the business relationship contemplated by this Agreement.
- (e) In the event of termination of this Agreement, each Party shall deliver to the other such engineering designs and drawings, and permit applications and permit approvals as may be required by the other Party. Further, each Party agrees to cooperate with the other to assist with the continuation of its respective portion of the Project and the recovery of any Department of Energy grant funds. Other than Department of Energy grant funds, and subject to Subsection 5(c) hereof, each Party agrees to be responsible for its own expenses and costs through the date of termination, as well as any remaining residual costs and expenses to terminate its participation in the Project.

Section 5. Construction Costs

- (a) The Parties agree that the total estimated budgeted cost of the State Heat Plant, exclusive of City owned equipment and structures, is \$15,293,698. This amount is estimated to be comprised of the State Contribution (defined below), the DOE Grant Allocation (described below) and the City Contribution (described below). The State contribution shall be comprised of a \$7,000,000 appropriation and additional State contributions of \$1,163,744 of in-kind and asset value and \$246,373 in feasibility study work (together, the "State Contribution") equal to 54.99% of the budgeted cost of constructing the State Heat Plant. The Parties further agree that the total estimated cost of the City Distribution System is \$4,866,419. This amount excludes the costs of the heat exchangers to be constructed by the State, but includes the cost of conversion for the High School and the Elementary School.
- (b) DOE Grant Allocation. The \$8,000,000 DOE Grant will be allocated as follows:
 - (i) \$3,248,664 to reimburse the State for its share of the total State Heat Plant cost (equal to 21.24% of total State Heat Plant cost);
 - (ii) \$2,558,118 (equal to 16.73% of the budgeted cost of constructing the State Heat Plant), constituting a portion of the consideration for the City's Initial Contracted Capacity; and
 - (iii) the balance of \$2,193,218 to reimburse the City for its costs of the City Distribution System.

- (c) City Contribution. The City will pay to the State from City funds \$1,076,799 equal to 7.04% of the budgeted cost of constructing the State Heat Plant (the “City Contribution”). The State will provide an accounting of the cost of construction of the State Heat Plant as design and construction progresses on the same schedule as the State requests reimbursement from the DOE Grant funds in accordance with the Sub-Recipient Agreement, but no less than quarterly. The State’s accounting will take the form of an invoice to the City for the City’s allocated share of State Heat Plant costs. In the event that the Project is terminated and the State’s accounting indicates a balance due the City, the State will return any unallocated balance to the City.
- (d) Installments of the City Contribution shall be made to the State by wire transfer not less than ten (10) Business Days following receipt of the State’s request for payment. The State will provide the City with the appropriate electronic funds transfer information.
- (e) The City may contribute the City Contribution (as defined in subsection (c) above) in whole or in part in advance of design and construction expenditures by the State. Payments made in advance by the City will be accounted for by the State as a credit balance with expenditures deducted for the City’s allocated share of State Heat Plant costs as work progresses. The State will maintain an accounting of City payments and make that accounting available to the City at the time the State requests reimbursement from the DOE Grant in accordance with the Sub-Recipient Agreement.
- (f) The City shall have an Initial Contracted Capacity of 9.71 MMBTU/Hour, or 24.16% of the total net capacity of the State Heat Plant.
- (g) If at any time during the development of the Project a Party determines that the total estimated budgeted costs of the State Heat Plant and/or the City Distribution System are likely to be above or below the total estimated budgeted amounts set forth above in Section 5(A) and 5(B), the Parties shall promptly meet and in good faith attempt to mutually agree upon budget adjustments appropriate to the Project.
- (h) Reconciliation of Construction Cost.
- (i) Upon completion of construction and commercial operation of the State Heat Plant, the State will prepare a final accounting of the cost of construction and placing the State Heat Plant into service.
 - (ii) In the event that the final accounting indicates a higher than budgeted cost, the State and City shall promptly meet and in good faith attempt to mutually agree upon the best course of action for sharing such cost

overrun, taking into account such factors as State and City budgets, available sources of funding, the potential for adjusting the cost of future Capacity purchases by the City and the potential for adjustment of the respective shares of State and City Capacity.

- (iii) In the event that the final accounting indicates a lower than budgeted cost, the State and the City will share the difference as follows: 1.) first, to the extent the State Contribution exceeds 50% of the total State Heat Plant construction cost , the State will retain an amount of the difference between the budgeted and final cost necessary to reduce the State Contribution to an amount equal to 50% of total State Heat Plant cost, 2.) At the point that State has recovered construction cost savings such that the State Contribution equals 50% of the total construction cost, any balance remaining will be allocated to the State and City in proportion to their pro-rata share of total State Heat Plant Capacity.
- (iv) The State and the City each reserve the right to seek additional funding from any other source in connection with the completion of the Project.
- (v) The percentage shares of total State Heat Plant cost set forth herein shall be used for purposes of requesting DOE Grant reimbursement and may be restated only as the Parties may otherwise agree in accordance with subsections (g) and (h)(ii) and (iii) above.

Section 6. Notices

A notice given by either Party to this Agreement shall be sufficient if sent In accordance with Section 18 of the Purchase and Sale Agreement.

Section 7. Authority of the Signatory

Each of the Parties to this Agreement represents and warrants to the other that it has the authority to bind itself to all of the commitments set forth in this Agreement. This

Agreement is governed by the laws of the State of Vermont.

STATE OF VERMONT
DEPARTMENT OF BUILDINGS
AND GENERAL SERVICES

CITY OF MONTPELIER

Date: _____

Date: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____