

SUB-RECIPIENT AGREEMENT

THIS AGREEMENT, effective the ___ day of January, 2012, by and between the CITY OF MONTPELIER, VERMONT and the STATE OF VERMONT.

Recitations

- A. The City of Montpelier (“the Recipient”) has received a United States Department of Energy (“the DOE”) Renewable Energy Community Grant (“the DOE Grant”) to build a district heat system in the capital city of Vermont; and
- B. The State of Vermont, by and through its Department of Buildings and General Services (“the Sub-recipient”), will use part of the grant money to re-build its heat plant in a way that allows it to provide thermal energy to the Recipient’s distribution system; and
- C. The Recipient and the Sub-recipient have entered into a Memorandum of Understanding executed June 9, 2011 (“the MOU”) that sets out the responsibilities of the two entities with regard to funding, designing, constructing and operating the heat plant and distribution system. The MOU allocated DOE Grant funds between the Recipient and the Sub-recipient; and
- D. The Recipient and the Sub-recipient have entered into a Procurement Agreement of even date herewith (the “Procurement Agreement”) which provides that the Sub-recipient will be allocated \$3,248,664 of the funds to be reimbursed pursuant to the DOE Grant as a contribution to the total heat plant cost. Additional DOE Grant funds in the amount of \$2,558,118 plus additional non-DOE consideration will be made available to the Sub-recipient to assure that plant capacity of 9.71 Million BTU/Hour is reserved for use by the Recipient to serve the Recipient’s district heat system; and
- E. The purpose of this Agreement is to set forth the procedures for reimbursement of the Sub-recipient by the Recipient of funds to be reimbursed to the Recipient by the DOE pursuant to the terms and conditions of the DOE Grant; and
- F. These Recitations are incorporated in and made a part of this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. General Procedures

The Sub-recipient will furnish documentation of its expenditures and the required cost share to the Recipient in a form and format acceptable to the Recipient for purposes of DOE compliance; the Recipient will send documentation of both its expenditures and cost share and those of the Sub-recipient to the DOE in a form and format as specified by DOE; upon reimbursement by the DOE to the Recipient, the Recipient will pay the Sub-recipient the amounts for the Sub-recipient and the Recipient’s share due to the Sub-recipient that have been approved by DOE based on the Recipient’s and Sub-recipient’s documentation filed with DOE.

a) General Compliance Obligations. The Recipient and the Sub-Recipient acknowledge that all funds provided from the DOE Grant are provided on a reimbursement basis and must be consistent with the DOE Statement of Project Objectives (“SOPO”), the MOU and the Procurement Agreement and comply with the Special Terms and Conditions of the DOE Grant. The Recipient and the Sub-recipient acknowledge and understand that, as a condition of receiving reimbursement hereunder, they must provide documentation showing compliance with all aspects of the Special Terms and Conditions of the DOE Grant. The Recipient shall specify a form for the Sub-recipient to provide the required data, including a paper form or an electronic form in a format commonly used by both parties in the ordinary course of business. The Sub-Recipient agrees that it shall provide all information necessary to comply with the DOE Grant and as requested by the recipient in a timely manner so that the Recipient is able to comply with all reporting requirements, as further set forth herein. If the DOE requires additional substantiation of expenditures or compliance from the Recipient or the Sub-recipient, the Recipient or Sub-recipient will provide it. The Recipient agrees that all information submitted by the Sub-Recipient will be submitted by the DOE in a timely manner, in order for the parties to remain in compliance with the requirements of the DOE Grant.

b) Construction Obligations. The Sub-recipient agrees to be responsible for the full performance of all construction obligations under the Grant and the Procurement Agreement relating to the State Heat Plant (as defined in the Procurement Agreement), including any DOE Grant requirements in connection with the construction of the State Heat Plant, including, but not limited to:

- i. compliance with applicable National Environmental Policy Act (NEPA) requirements;
- ii. providing reasonable access to facilities, office space, resources and assistance for the safety and convenience of the DOE and any other government representatives in the performance of their federal stewardship duties;
- iii. obtaining any required permits and compliance with applicable federal, state and municipal laws, codes and regulations for work performed under the grant;
- iv. all other applicable requirements listed in the Special Terms and Conditions.

2. Reimbursement Requirements

a. Sub-Recipient Submission

On or before the fifth business day following the end of each month during which the Sub-recipient has made expenditures for which it seeks reimbursement under the terms of the DOE Grant, the Sub-recipient shall submit to the Recipient scanned copies of original invoices and documentation that the expenditures qualify for reimbursement pursuant to the terms of the DOE Grant and that the requisite cost share funds have been expended. The information and documentation will be submitted in a form agreed to by the Parties. Each submission must demonstrate that the cost-share has been met; reimbursement will only reflect 50% of the total expenditure.

Within 10 business days of the execution of this Agreement, the Sub-recipient shall assign and identify to the Recipient a single individual within the Department of Buildings and General Services who will act as the liaison for the Sub-recipient to provide all information necessary to make reimbursement filings to the DOE for grant funds.

- (i) Compliance with the Davis-Bacon Act

If called upon to demonstrate compliance with the Davis-Bacon Act, the Sub-recipient shall be prepared to substantiate compliance with the requirements of that Act, which include collecting weekly certified payrolls, conducting interviews, posting Davis-Bacon Act signage on job sites, and maintaining these records, as explained in more detail at the following web site: http://www1.eere.energy.gov/wip/pdfs/doe_dba_desk_guide.pdf . The Sub-recipient shall certify with each invoice that it has collected and maintained these records.

(ii) Compliance with the ARRA

The Sub-recipient shall provide to the Recipient requested data necessary to satisfy the ARRA filing requirements each calendar quarter. (Calendar quarters are as follows: Q1: January, February, March; Q2: April, May, June; Q3: July, August, September; Q4: October, November, December.) ARRA reports are required to be successfully injected into the federal reporting system by the 10th day following the close of the quarter, as explained at <https://www.federalreporting.gov/federalreporting/home.do>. In order to comply with this requirement, the Sub-recipient shall ensure the Recipient has the requisite data by the 5th calendar day following the close of the quarter and the Sub-recipient shall immediately answer any questions necessary to provide complete reporting. The Sub-recipient shall become familiar with the requirements for reports by consulting guidance on reporting to “federalreporting.gov” found at the following web site: <https://www.federalreporting.gov/federalreporting/downloads.do>

The Sub-recipient shall supply information to the Recipient necessary to list it as a sub-recipient in the federal reporting system and provide information to the Recipient on an on-going basis to properly file the requisite reports, including all personnel hours paid for with either DOE Grant funds or cost-share funds. Each re-imbursement request shall include an accounting of the cumulative funds requested and the cumulative funds received. To facilitate efficient reporting under the ARRA, current and cumulative totals of personnel service hours and DOE Grant funds received will be reported by the Sub-recipient. In addition, all single contracts over \$25,000 will be tracked consistent with ARRA reporting requirements. The Sub-recipient shall require certification from each vendor from which it makes purchases that the items purchased were produced in the United States, as required by the ARRA.

b. Review by Recipient, Submittal to DOE and Transfer of Funds to Sub-Recipient

The invoices and supporting documentation from the Sub -Recipient shall be submitted to the attention of Director of Planning and Community Development, City of Montpelier, 39 Main Street, Montpelier, VT, 05602, with a copy to City Manager, City of Montpelier, 39 Main Street, Montpelier, VT, 05602. The Recipient will review documentation submitted by the Sub-Recipient for completeness and consistency with the requirements of this Agreement, the DOE Grant, the MOU dated June 9, 2011 between the City and State and the Procurement Agreement. Any identified deficiencies will immediately be brought to the attention of a person designated for this purpose by the Sub-recipient.

Reviewed invoices will be transmitted to the City of Montpelier’s Finance Department. If the Sub-recipient’s reimbursement request is in order, it will be submitted to the DOE within five (5) business days of receipt. Such a reimbursement request will require an entry request of the DOE’s electronic financial system and submissions of supporting documentation to the DOE Project Manager. If the DOE Project Manager concludes that the expenses qualify for reimbursement, reimbursement is authorized.

Once the DOE reimbursement funds are transferred to the Recipient, the Recipient will transfer them electronically to the Sub-recipient. The Recipient will use its best efforts to transfer the funds to the Sub-recipient the same day as they are received in the Recipient's account and, in any event, the transfer will be made within not more than ten (10) business days after receipt from DOE. The Sub-Recipient will provide the Recipient with the appropriate electronic funds transfer information.

3. Program Reports to the DOE; Audits

a. Program Reports to the DOE; Liability of Recipient

The parties acknowledge that a condition of the DOE Grant is that the Recipient must submit a program report to the DOE Project Management Center ("PMC") within thirty (30) days following the close of each calendar quarter. These reports are to document progress of the project relative to the Statement of Project Objectives (SOPO), important activities under the project, forecast activities for the subsequent quarter and report a budget summary on a standard form (SF-425). In order to meet this deadline, the Sub-recipient shall report its progress on the achievement of SOPO tasks and relevant quarterly activities to the Recipient on or before 15 days following the close of the quarter. All relevant documents, including spreadsheets (in Excel format), CAD files (in appropriate format) and documents that have been produced with the funds invoiced shall be submitted by the Sub-recipient to the Recipient with the report.

The Recipient shall provide a compiled draft quarterly report to the Sub-recipient for review within 20 days of the close of the quarter. The Sub-recipient shall have until the 25th day following the close of the quarter to provide comment on the compiled quarterly report. The Recipient shall submit the quarterly report to the PMC system by the 30th day following the close of the quarter.

b. Audits

The Parties agree that audits shall be handled in accordance with Attachment C of the Thermal Energy Purchase and Sale Agreement dated even date herewith, except as may otherwise be necessary to satisfy DOE requirements.

c. Liability

(i) Except to the extent any failure or delay of the Sub-recipient to receive or transfer funds hereunder is caused by the negligent act or omission or willful misconduct of the Recipient, the Recipient shall not be liable (y) for the failure or delay of the DOE to reimburse the Sub-recipient for any funds expended by the Sub-recipient pursuant to this Agreement; or (z) for the consequences of any failure by the Sub-recipient to provide adequate documentation or to sufficiently perform any precondition to reimbursement.

(ii) Except as provided above, the Parties agree that issues of liability shall be handled in accordance with Attachment C of the Thermal Energy Purchase and Sale Agreement dated even date herewith.

IN WITNESS WHEREOF, the parties have hereunto set their hands the ____ day of January, 2012.

CITY OF MONTPELIER, VERMONT

By _____

Title _____

STATE OF VERMONT BY THE DEPARTMENT OF
BUILDINGS AND GENERAL SERVICES

By _____

Title _____