

**Memorandum of Understanding
Between
The State of Vermont Department of Buildings and General Services
and
The City of Montpelier**

Purpose:

The purpose of this Memorandum of Understanding is to confirm the mutual understanding of the parties with respect to the potential development of a business relationship between the State of Vermont (the “State”) and the City of Montpelier (the “City”) The State and City are sometimes referred to individually as a “Party” and collectively as the “Parties.”

The State and the City have been working together for the purposes of developing and obtaining the necessary legislative, administrative, municipal and regulatory approvals and permits for the development of a biomass fueled heating boiler plant and related system (the “Heat Plant”) and district heat distribution system (the “Distribution System”) to provide the thermal energy requirements of State owned and City served buildings located in downtown Montpelier. The Heat Plant and Distribution System are sometimes collectively referred to as the “District Heating Project.”

Background:

The overriding goal by both Parties is to reduce reliance on fossil fuels, support regional economic activity and reduce the cost of space heating in the Capital Complex and City of Montpelier.

The District Heating Project will be developed in phases. The first phase calls for the accelerated replacement of the State’s Capital Complex present district heating boiler plant (Heat Plant) and the expansion of system capacity to accommodate the City of Montpelier’s own heating requirements, plus an initial expansion of the City’s district heating capability to include downtown commercial and residential properties.

On the occasion of approval of capital funding for the State’s portion of the Heat Plant by the Legislature, consistent with the requirements of the State’s authorizing legislation (Section 2(e) of Act No.40, Laws of 2011) and recognizing the shared and individual responsibilities of the Parties going forward, the Parties enter into this Memorandum of Understanding at this time.

Specific Conditions and Legislatively Required Items:

Responsibilities of the Parties:

On the Part of the State:

The State will have the sole responsibility to plan, design, construct, own, operate and maintain the Heat Plant consistent with policies and procedures established and implemented through the Vermont Department of Buildings and General Services; however, the State may involve the City in this process to the extent desirable by the State. For its part, the State will update its existing Heat Plant to a modern biomass

fueled facility with sufficient capacity to serve the State's own current and projected load plus the initial identified load of the City.

The State agrees to negotiate in good faith with the City a 20-year thermal energy purchase and supply contract, and such extensions as the parties agree up to a maximum of 10 years, whereby the State will supply thermal energy to the City's Distribution System. The State will design, construct and operate a reliable and efficient Heat Plant consistent with good engineering standards to serve the identified needs of the State and City.

The State will be responsible for obtaining all State and Local permits and approvals required for construction and operation of the Heat Plant. The Parties agree to work together to obtain all necessary Federal approvals. The City will cooperate with the State in obtaining required regulatory permits and approvals. The State is solely responsible for all safety and environmental regulations relating to the construction, operation and maintenance of the Heat Plant assets.

On the Part of the City:

The City will have the sole responsibility to plan, design, construct, own, manage, operate and maintain the Distribution System consistent with policies and procedures established and implemented by the City. 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 Distribution System suitable to serving the needs of public and private buildings in downtown Montpelier.

The City agrees to negotiate in good faith with the State a 20-year thermal energy purchase and supply contract, and such extensions as the parties agree up to a maximum of 10 years, whereby the City will purchase energy for the City's Distribution System. The City will design, construct and operate a reliable and efficient Distribution System consistent with good engineering standards to serve the identified needs of the City and State.

The City will be responsible for all State and Local permits and approvals for construction of the Distribution System. The Parties agree to work together to obtain all necessary Federal approvals. The State will cooperate with the City in obtaining required regulatory permits and approvals. The City is solely responsible for all safety and environmental regulations relating to the construction, operation and maintenance of the Distribution System assets.

The Proposed System:

The 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 completion of construction, and building structures necessary to the safe and efficient operation and maintenance of a modern steam boiler plant. The Heat Plant will be designed to

primarily be fueled by biomass and use #2 fuel oil as a secondary and emergency fuel source.

The 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 BHP dual fueled boilers, each with a rated capacity of 20.1 Million BTU/hr will be installed. In addition, the newer of the existing oil boilers will be relocated and modified to operate on #2 fuel oil (the Heat Plant currently uses # 6 fuel oil).

A space will be reserved in the new Heat Plant to accommodate at a later date an additional boiler with a rated capacity of 600 BPH 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 Heat Plant. The Heat Plant systems will be designed to deliver energy to the City's Distribution System at 50 PSIG. The total net capacity of the Heat Plant will be 40.2 Million BTU/hr (not including backup boiler capacity). The allocated share of the City's capacity of this total is a maximum of 9.71 Million BTU/hr.

The Distribution System will consist of the City's piping system and equipment to distribute the hot water including the thermal conversion unit, which shall be owned, operated and maintained by the City upon completion of construction, and all other equipment and machinery necessary to connect and distribute the energy to the City's load, which may include the City's customer load.

State and City Funds and Allocation of Federal Grant Funds:

The total budgeted cost of the Heat Plant, exclusive of City owned equipment and structures, is \$15.047 million. The Vermont Legislature has approved a total of \$7.0 million and the State will contribute another \$1.164 million of in-kind and asset value to the total cost of the Heat Plant. The proceeds of the \$8.0 million Department of Energy grant will be allocated as follows: 1) \$3.249 million directly to the State for its share of the total Heat Plant cost, 2) \$2.558 million directly to the State for a portion of the City's contribution to the total Heat Plant cost, and 3) the balance of \$2.193 million to the City as a contribution to the cost of the Distribution System. The City will contribute another \$1.077 million to the State for the balance of the City's portion of the Heat Plant cost. The parties acknowledge that the amounts recited in this paragraph are for budgetary purposes and that the actual amounts will be known once final engineering estimates and bid responses are known.

The Mechanism for Establishing the Wholesale Thermal Energy Price:

The State will sell thermal energy to the City at rates and on a schedule established to permit the State to recover its cost of production. The State will provide the City with information that allows the City to confirm the cost of production. After consulting with

the City, the Commissioner of Buildings and General Services shall establish the rate schedule. Energy sold to the City will be metered at the point of delivery to the City's thermal conversion unit. The point of delivery will be at the City equipment room attached to the Heat Plant. Both Parties shall have access to read the meter(s). The City shall be responsible for maintenance and proper operation of the thermal conversion unit.

Cost of production is defined to include all expenses incurred to meet the energy production and delivery requirements of the City including but not limited to fixed and variable operation and maintenance expenses, fuel cost at prices delivered to the Heat Plant, and reasonable maintenance reserves. The pricing mechanism will include procedures to reconcile any difference between budget and actual production expenses. The Parties acknowledge a mutual desire for a simple reconciliation process.

Continuity of the District Heating Project:

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 Memorandum of Understanding. In the event that either Party is unable to proceed with the contemplated business relationship for any reason, the Party unable to proceed agrees to provide prompt notice to the other Party identifying the reasons for its inability to proceed and to cooperate with the remaining Party to enable the remaining Party to benefit from the efforts of the business relationship to such point in time. The City agrees that regardless of the outcome of the City's bond vote, the City will cooperate with the State to aid the State in retaining the benefit of federal grant funds for this Heat Plant. Accordingly, benefits include but are not limited to the use of the Department of Energy grant funds, engineering designs and drawings, and permit applications and permit approvals. If either Party is unable to proceed, each Party agrees to cooperate with the other to assist in the recovery of any Department of Energy grant funds that the Party may be entitled to receive. Other than Department of Energy grant funds, each Party agrees to be responsible for its own expenses and costs to that point in time, as well as any remaining residual costs and expenses to terminate its participation in the District Heating Project.

Project Milestones:

The Parties acknowledge the compressed timeline related to the purpose and goals of this Project and agree to work cooperatively to diligently accomplish the tasks contemplated by this Memorandum of Understanding. Project milestones include:

- A. June 09, 2011-- Legislative deadline to execute this Memorandum of Understanding
- B. June 14, 2011-- Scheduled date for City bond vote
- C. July 01, 2011-- Target date to submit amended Department of Energy Statement of Project Objectives (SOPO) to Include State Heat Plant activities
- D. July 18, 2011 – Target date for State to issue RFP for Heat Plant major equipment supplier

- E. August 15, 2011 – Target date to execute Thermal Energy Purchase and Sale Contract
- F. August 16, 2011 – Target date to complete selection of Heat Plant major equipment supplier
- G. December 20, 2011 – Target date to receive all major permits required to construct Heat Plant
- H. December 21, 2011 – Target date to release Heat Plant major equipment supplier to manufacture equipment
- I. February 14, 2012 – Target date to release RFP for Heat Plant construction
- J. May 9, 2012 – Target date to commence physical construction of Heat Plant
- K. April 15, 2013 – Target date to complete Heat Plant construction

General Conditions:

Reliance/Good Faith:

Each Party shall exercise good faith toward the other in connection with the tasks specified within this Memorandum of Understanding, including providing complete and accurate information necessary to complete the District Heating Project in a timely manner. The Parties agree to coordinate their relationships with third parties involved in the development of the District Heating Project. Should there be a disagreement the Parties agree to work out the arrangements between them in good faith.

Expenses of the Parties:

Unless otherwise agreed to in writing by the Parties, each Party shall be accountable for the costs and expenses associated with performing and carrying out the responsibilities assigned to it under the terms and conditions of this Memorandum of Understanding.

Final Agreement:

The Parties agree to work toward an Energy Purchase and Sale contract pending the City's bond vote and any other steps necessary to finalize their agreement. The State agrees to provide a form of an Energy Purchase and Sale contract to the City for its review, approval and execution. Both Parties agree to pay for their own legal and technical expenses in drafting and reviewing the final contract.

Insurance:

Before commencing work on the Project, the City must provide certificates of insurance satisfactory to the State. The City shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Memorandum of Understanding. The State will afford liability protection in accordance with the Vermont Tort Claims Act set forth in 12 V.S.A. Chapter 189. The State will provide the City with a certificate of insurance upon request.

Transfer and Assignment of Benefits:

Neither Party may assign or transfer to any other person or entity this Memorandum of Understanding in whole or in part or allow any other person or entity to succeed to any or all of their rights under this Memorandum of Understanding without the prior written consent of the other Party.

Notices:

A notice given by either Party to this Memorandum of Understanding shall be sufficient if sent by registered mail or certified mail, return receipt requested, to either Party at the address specified below. Any notice shall be effective on the date mailed.

State of Vermont

Commissioner,
Vermont Department of Buildings and General Services
2 Governor Aiken Ave
Montpelier, Vermont 05633

City of Montpelier

City Manager
City of Montpelier
39 Main Street
Montpelier, Vermont 05602

The designation of such person(s) and/or addresses may be changed at any time by either Party upon written notice given pursuant to the requirements of this Section.

Authority of the Signatory:

Each of the Parties to this Memorandum of Understanding represent and warrant to the other that it has the authority to bind itself to all of the commitments set forth in this Memorandum of Understanding. This Memorandum of Understanding and any subsequent Energy Purchase and Sale Agreement will be governed by the laws of the State of Vermont.

Entire Agreement:

This Memorandum of Understanding constitutes the entire agreement between the Parties and shall not be modified or amended unless in writing and signed by both Parties.

STATE OF VERMONT
DEPARTMENT OF BUILDINGS
AND GENERAL SERVICES

CITY OF MONTPELIER

Title Date

Title Date