

**Montpelier  
District Heat**

**Customer Agreement**

**October 2012**

## **THERMAL ENERGY AGREEMENT**

The City of Montpelier, Vermont, located at City Hall, 39 Main Street, Montpelier, VT 05602 (hereafter known as the "City") and \_\_\_\_\_ (hereafter known as "Customer,"), currently having an address at \_\_\_\_\_ agree as follows ("Agreement"):

### **WITNESSETH**

WHEREAS, Customer owns the building commonly known as the \_\_\_\_\_ building located at \_\_\_\_\_ in Montpelier (the "Building").

WHEREAS, The City is in the business of constructing and operating a district heating system (the "District Heating System," as defined in Section 5.1) that will deliver thermal energy generated primarily from biomass products at the State of Vermont heat plant in the Capital Complex; and

WHEREAS, The City desires that the District Heating System would provide thermal energy to the Building and other surrounding buildings in the downtown Montpelier area; and

WHEREAS, in contemplation of the City's construction and operation of such District Heating System, Customer has agreed to purchase thermal energy from the City for the Building for the term of this Agreement subject to the terms, contingencies, and conditions in this Agreement.

NOW, THEREFORE, the parties agree as follows:

### **ARTICLE I**

#### **CUSTOMER'S PURCHASE**

1.1 Subject to the contingencies, terms, and conditions hereinafter set forth in this Agreement, including the "Uniform Provisions" (defined in Section 1.11), attached hereto and incorporated herein, Customer agrees to pay for and buy heat and hot water ("Thermal Energy") for the Building for the Term of this Agreement from the City.

1.2 The "System Completion Date", as used in this Agreement, shall be the date when construction of the District Heating System, defined in Section 5.1 of the Uniform Provisions, is substantially complete and the District Heating System is ready for service to Customer. The System Completion Date is currently anticipated to be on or before October 1, 2013.

1.3 The City shall make commercially reasonable efforts to meet the above currently anticipated System Completion Date.

1.4 "Customer's Completion Date", as used in this Agreement, shall be nine (9) months following the date Customer receives written notice from the City of the scheduled System Completion Date following commencement of construction of the District Heating System.

Customer shall complete the Building Conversion, as described in Section 4.1, on or before the System Completion Date.

1.5 Customer's "Initial Contract Capacity" for Thermal Energy, as referenced in this Agreement, is \_\_\_\_ Thousand British Thermal Units per Hour ("MBTUH"), based on an analysis by the City of past needs for heat in the Building and such other factors that the City believes should be taken into account. The Initial Contract Capacity attributable to Customer shall remain in effect up to and including April 30, 2016, unless it is modified in accordance with Article VI.

1.6 Customer's "Point of Delivery", as defined in Section 4.2, is that point as identified on Exhibit A attached hereto. The Customer will secure any necessary building permits or other necessary governmental approvals for any work on the property of Customer to extend service line pipes from the point where they enter the Customer's private property to the Customer's Point of Delivery through the footprint of the Building wall.

1.7 "Service Connection Charges" shall be as described in Section 5.4. Within twelve (12) months after the First Service Date (as defined in Article II), the City shall provide Customer with the Service Connection Charges applicable to Customer's Building.

1.8 The parties' obligations under this Agreement are expressly conditioned upon: (A) the City's obtaining all required governmental permits and approvals for construction of the District Heating System; (B) completion of construction of the District Heating System; and (C) a determination by the Montpelier City Council that the District Heating System will commence operations.

1.9 Customer agrees to rely on the District Heating System as Customer's exclusive supplier of Thermal Energy for the Building for the Term of this Agreement. In the event Customer has the capability to supply Thermal Energy to the Building from a source other than the District Heating System, it shall do so only pursuant to a written protocol with the City and only to supply needed standby Thermal Energy when the District Heating System does not have the capability to serve all of its customers.

1.10 Articles II through XXIV, "Uniform Provisions" of this Customer Agreement, shall, to the extent reasonably feasible, be identical for all customers. Customer acknowledges and represents that Customer has reviewed the Uniform Provisions and does, by execution hereof, incorporate the same herein and agrees to be bound by their terms and conditions. Provisions of this Article 1 represent unique Customer characteristics and shall supersede any inconsistent provisions of the Uniform Provisions.

1.11 This Agreement, including the Uniform Provisions, shall constitute the full understanding of the parties hereto with respect to the transactions contemplated hereby and shall supersede all prior oral or written negotiations or agreements. No amendment to this Agreement shall be valid unless it is in writing and executed by both parties hereto.

1.12 The person(s) executing this Agreement on behalf of Customer represent(s) and warrant(s) that, if Customer is a corporation, limited liability company or a partnership, the undersigned is/are duly authorized and empowered to execute and enter into this Agreement and obligate and bind Customer to this Agreement and the covenants, obligations, and requirements hereof. This Agreement shall be binding upon Customer's heirs, successors and assigns and upon all future owners of the Building. Customer shall assure that any new owner of the Building undertakes to perform all obligations herein.

1.13 The City's representative executing this Agreement represents and warrants that the representative is duly authorized and empowered to enter into this Agreement.

1.14 This Agreement is governed by the laws of the State of Vermont. The Parties agree that the State and Federal courts of Vermont shall have exclusive jurisdiction to hear and resolve and legal disputes relating to this Agreement that cannot otherwise be resolved by the Parties.

1.15 Notices from one party to the other shall be provided in accordance with Article XXIII and shall be addressed as follows:

IF TO CUSTOMER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IF TO CITY: William Fraser, City Manager  
City Hall  
39 Main St.  
Montpelier, VT 05602

1.16 For annual rate periods subsequent to the date of this Agreement and prior to July 1, 2016, Customer shall pay the city a "Capacity Charge" in each "Billing Period" (defined in Section 10.1) equal to the product of Customer's Initial Contract Capacity multiplied by the following applicable Capacity Charge Rates:

- July 1, 2013 - June 30, 2014: Capacity Charge Rate is \$4.77 per MBTUH per month
- July 1, 2014 - June 30, 2015: Capacity Charge Rate is \$4.84 per MBTUH per month
- July 1, 2015 - June 30, 2016: Capacity Charge Rate is \$4.91 per MBTUH per month

IN WITNESS WHEREOF, Customer and the City have executed and delivered this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

City of Montpelier, Vermont \_\_\_\_\_

\_\_\_\_\_  
William Fraser, City Manager By: \_\_\_\_\_, Authorized Agent

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed

**Montpelier  
District Heat**

**Uniform Provisions**

**October 2012**

## **ARTICLE II TERM**

This Agreement shall be in effect from the date signed and continue in force unless terminated by mutual agreement of the parties, and/or in accordance with the provisions of Article XV. The Term of this Agreement shall begin on the earlier of Customer's Completion Date or on the date Customer first receives thermal energy for continuing heating purposes at Customer's Point of Delivery ("First Service Date"), and shall, unless otherwise agreed by the parties, continue for a period of not less than twenty (20) years.

## **ARTICLE III DISTRICT ENERGY SERVICE**

3.1. The City intends to construct and operate the hot water distribution system known as the District Heating System, as defined with more particularity in Section 5.1, providing Thermal Energy in the form of hot water purchased from the State of Vermont, and may use sufficient additional sources of energy to give the City the ability to meet the aggregate Thermal Energy demand of all customers purchasing Thermal Energy when the ambient outdoor temperature is as low as -11°F.

3.2. The City represents that it has constructed or will construct the District Heating System as necessary to allow Customer to connect Customer's Building Heating System to the District Heating System so that the delivery of Thermal Energy to Customer will commence by no later than the System Completion Date.

3.3. The City acknowledges that Customer's Initial Contract Capacity is reasonable, based upon the City's estimates or verification of the Building's records.

3.4. The City agrees to continuously provide Thermal Energy to Customer sufficient to satisfy Customer's Capacity during the term hereof subject to the contingencies, terms, and conditions set forth herein.

## **ARTICLE IV CUSTOMER BUILDING CONVERSION**

4.1. "Building Conversion" means such modification and alteration of Customer's Building and its heating system (the "Building Heating System") as shall be required to make the Building Heating System compatible with: 1) the performance specifications required by the City, as specified in the document entitled *Standards and Guidelines for Designing Heating Systems in Buildings Connected to a Hot Water Distribution System* prepared by the City and attached to this document as Appendix A (the "Standards"), including any amendments as the City might make from time to time, with notice to the Customer, and 2) utilization of Thermal Energy in accordance with this Agreement. If, during the Term of this Agreement, the Standards are amended so that modifications are necessary to conform to the amended Standards, the parties shall agree on a schedule for such modifications and an equitable allocation of costs, taking into account any benefits that the modifications are likely to bring to Customer. To the extent not

inconsistent with the Standards, Customer may design the Building Conversion to the specifications desired by Customer.

4.2. "Point of Delivery" shall mean the point established in Article I to which the thermal energy shall be delivered through the District Heating System to the Building and the point at which such water shall be returned from Customer's Building Heating System to the District Heating System. The Point of Delivery shall demarcate the Building Heating System and the District Heating System, even if in some cases there is no actual physical barrier at that point.

Customer shall complete its Building Conversion prior to Customer's Completion Date, subject to Section 1.3 so that it may receive hot water from the Point of Delivery and utilize Thermal Energy to heat the Building.

## **ARTICLE V CONNECTION TO DISTRICT HEATING SYSTEM**

5.1. "District Heating System" shall mean all equipment, facilities and materials, including boilers, heat exchangers, heating sources, pumps, pressurizers, pipes, lines, gauges and controls, and any other type of property now or hereafter owned, operated or controlled by the City, or from which the City has a right to purchase heat, steam or hot water for the purpose of or incidental or useful in heating, distributing, receiving, collecting, monitoring, and metering hot water, excluding any part of any customer's building heating system.

5.2. Prior to the System Completion Date, the City shall cause the District Heating System to be constructed or expanded as, in the sole judgment of the City, may be required to enable the delivery of thermal energy to Customer's Point of Delivery and the return of water to the District Heating System in accordance with this Agreement.

5.3. Customer gives permission to the City to install, service, remove, or repair piping and other equipment on Customer's premises that is necessary to deliver or meter Thermal Energy to the Building or to maintain the integrity of the District Heating System. The City shall repair all damage caused by the acts or negligence of its employees, agents or contractors, and restore all property disturbed thereby.

5.4 In the absence of a written agreement to the contrary, Customer shall pay all Service Connection Charges and maintenance costs related to the connection of the Building Heating System to the District Heating System. Service Connection Charges shall include, but not be limited to, actual construction costs, the cost of Metering Equipment to measure Customer's use, design and other professional fees, and permit, insurance and financing costs required to complete the connection. The parties acknowledge that the Service Connection Charges may be the subject of negotiation between the parties. Customer grants the City the right to conduct repairs deemed necessary by the City to any components of the Building Heating System or to the connection between the District Heating System and the Building Heating System. The City shall repair all damage caused by the acts or negligence of its employees, agents or contractors, and restore all property disturbed thereby. Customer shall bear the costs of such repairs if they

are made to the Building Heating System, unless the need for such repairs arises due to any act or omission of the City, its employees, agents or contractors.

## **ARTICLE VI CAPACITY CHARGE**

6.1. Commencing on the earlier of the Customer's first Service Date or Customer's Completion Date and thereafter during the Term of this Agreement, Customer shall pay Capacity Charges as determined in this Article VI. Payment shall be in \_\_\_\_\_ equal installments, beginning with the Billing Period that includes October and ending with the Billing Period that includes April. If the building owner opts for the financing package the city has to offer, the payments will be in 12 installments throughout the year.

6.2. Subject to Sections 1.5, 6.3, and 6.4, Customer's "Capacity" for a City of Montpelier fiscal year from July 1 to June 30 shall mean Customer's maximum Thermal Energy demand, expressed in MBTUH, during any fifteen - minute period over the twelve month period ending May 31 immediately prior to such fiscal year.

6.3. When the equipment installed in a Customer's facility is not capable of directly measuring Customer's Capacity, and for the period of time described in Section 1.16, Customer's demand for a given City of Montpelier fiscal year shall be the greater of 1) Customer's demand as determined by the City at any time during such year, or 2) Customer's Initial Contract Capacity.

6.4. Customer may request, no later than May 24 of any year, an Initial Capacity Charge different than that established under Sections 1.16, 6.2 and 6.3 for the City of Montpelier's fiscal year beginning the following July, if Customer can establish prior thereto, to the reasonable satisfaction of the City, that Customer's use and demand for Thermal Energy during the entire City of Montpelier fiscal year next commencing will be reduced so that Customer's Capacity requirements will decline sufficiently to justify a reduction to Customer's Capacity during the current fiscal year.

6.5. "Aggregate Demand" for a City of Montpelier fiscal year will be the sum of Capacity for all hot water customers on the District Heating System during a City of Montpelier fiscal year. The System Capacity is the hot water generation capacity required to meet this Aggregate Demand.

6.6. "Capacity Related Costs" for a given City of Montpelier fiscal year shall mean all charges or allowances incurred by the City other than "Energy Related Costs" (defined in Section 7.3), over the course of such fiscal year. The Capacity Charge shall be developed such that in aggregate the funds collected shall be sufficient to cover all Capacity Related Costs incurred by the City and shall include the following:

- 6.6.1. All City operating, maintenance, and repair costs related directly or indirectly to the District Heating System, but excluding any costs defined as Energy Related Costs;

- 6.6.2. Reasonable City general and administrative costs, including legal and engineering costs, incurred by the District Heating System;
- 6.6.3. The City's debt service attributable to funds spent in connection with the District Heating System, net of the City's interest income;
- 6.6.4. Net increases or decreases in the City's working capital and the value of the State of Vermont fuel inventory during such year;
- 6.6.5. Capital expenditures not amortized through debt service and net increases or decreases during such year for reserves and replacements and capital improvements;
- 6.6.6. Amounts not collectible for Capacity Charges due (with credit for charges collected that in other fiscal years were expensed as uncollectible);
- 6.6.7. Prompt payment and pre-payment discounts for Capacity Charges;
- 6.6.8. Minimum debt coverage requirements under any indenture or any financing agreement related to bonds, substantially all the proceeds of which are used by or on behalf of the City to design, permit and construct the District Heating System provided that such proceeds are not used for expansion purposes;
- 6.6.9. Capacity Rate Discounts offered pursuant to Article I of this Agreement; and
- 6.6.10. Amounts paid by the City to the State for capacity that are not reflected in the components of Capacity Charges elsewhere in this Section 6.6, but which are required to be paid pursuant to the Agreement between the City and the State of Vermont included as Exhibit B attached hereto.

6.7. No later than June 15 in each fiscal year, the City shall prepare an estimate of the Capacity Related Costs for the next succeeding fiscal year. No later than June 30 in each fiscal year, the City Council shall approve a fiscal budget for all Capacity Related Costs expected to be incurred in the next succeeding fiscal year. A written statement of these projected Capacity Related Costs shall be forwarded to each Customer.

6.8. For each fiscal year, the Customer's Capacity Charge shall be equal to the projected Capacity Related Costs divided by the Aggregate Demand as of July 1, which yields a Capacity Charge per MBTUH multiplied by the Customer's Capacity as calculated by the process described in Sections 6.2, 6.3, and 6.4. Customer shall pay the annual Capacity Charge in seven or twelve equal billing installments unless otherwise provided in Section 8.4.

6.9. If Customer's Capacity Charge for the ensuing fiscal year has not been established on July 1 of any City of Montpelier fiscal year, Customer's Capacity Charge for the billing period commencing in such year shall be equal to Customer's Capacity multiplied by the Capacity

Charge per MBTUH for that year adjusted for the number of months Customer is connected to the District Heating System in the year.

Notwithstanding anything to the contrary herein, upon approval by the Montpelier City Council, for the last six months of any City of Montpelier fiscal year Customer's monthly Capacity Charge payments may be proportionally increased if (a) all customers' monthly Capacity Charge payments are increased in the same proportion, (b) such increase is necessary to generate sufficient revenue to offset projected Capacity Related Costs for such fiscal year because actual Capacity Related Costs exceed projected Capacity Related Costs for such year.

## **ARTICLE VII ENERGY CHARGE**

7.1. Customer shall pay for Thermal Energy actually used by Customer, in accordance with a formula based on an Energy Charge as determined by this Article VII. Thermal Energy charges shall vary according to use and shall be billed twelve months per year.

7.2. Customer's Thermal Energy use shall be calculated by measuring the volume of hot water delivered to Customer's Building and the difference in temperature of the hot water received at the Point of Delivery from the District Heating System and the hot water returned from Customer's Building Heating System to such point. The Thermal Energy used to heat Customer's Building shall be expressed in units of British Thermal Units (BTUs), or multiples thereof.

7.3. "Energy Related Charges" with respect to a given City of Montpelier fiscal year shall include all costs or allocations of costs projected by the City for such period relating to:

- 7.3.1. State of Vermont and City consumption of fuels, including but not limited to wood chips, oil, natural gas, and purchases of thermal energy (for purposes of valuing or pricing fuel consumed from inventory under this clause 7.3.1 above, the weighted average method shall be employed; normal storage losses shall be prorated according to the rate of fuel use);
- 7.3.2. Consumption of electricity and consumable chemicals and other products used in the production and distribution of hot water;
- 7.3.3. Reasonable allowances for amounts not collectible for Energy Related Charges due (with credit for charges collected that in other fiscal years were expensed as uncollectible);
- 7.3.4. Allowance for dissipation of heat during transmission on the District Heating System;
- 7.3.5. Additional costs imposed on the City by virtue of its agreements to purchase Thermal Energy from the State of Vermont, copies of which are included as Exhibit B hereto;

7.3.6. Prompt payment and pre-payment discounts for Thermal Energy Charges; and

7.3.7. Other costs reasonably incurred by the City in furnishing Thermal Energy under this Agreement.

7.4. Not later than June 15 each calendar year, the City shall prepare an estimate of the Energy Related Costs for the next succeeding fiscal year. No later than June 30 in each calendar year, the City Council shall approve a fiscal budget for all Energy Related Costs expected to be incurred in the next succeeding fiscal year. A written statement of these projected Energy Related Costs shall be forwarded to each Customer upon request.

7.5. Customer's Energy Charge for a given Billing Period (as defined in Section 10.1) shall be equal to all Energy-Related Charges for such fiscal year divided by all the MMBTUs of Thermal Energy estimated to be used by all of the City's hot water customers for the fiscal year (which yields an energy charge per MMBTU), multiplied by the number of MMBTUs used by the Customer for such Billing Period. The Energy Charge shall be appropriately adjusted (i.e. spread over the remaining months in a fiscal year) from time to time during the fiscal year to cover cost increases (or decreases) of energy purchased by the City and/or to reflect actual MMBTUs of Thermal Energy used by all of the City's hot water customers occurring subsequent to the establishment of projected Energy Related Charges for such period, to the extent that such costs and/or usage are in excess of (or below) those costs and/or usage projected by the City in establishing the Energy Related Charge for such period.

## **ARTICLE VIII MISCELLANEOUS RATE CONSIDERATIONS**

8.1. If during any year the maximum temperature of hot water returned from any Customer's Building Heating System to Customer's Point of Delivery exceeds 170° Fahrenheit during the months of November to March, Customer's demand in such year may be increased or decreased by the City by an amount appropriate to reflect the increased rate of hot water delivery to Customer at such time, and Customer's Capacity Charge shall be increased accordingly. The City shall not deliver hot water to Customers at temperatures exceeding 220° Fahrenheit.

8.2. The City shall promptly inform Customer in writing of the basis on which the City established Customer's Capacity Charge and Energy Charge for any period requested by Customer during the three (3) years preceding the date that the Customer requests such information, and shall in addition provide Customer with copies of all materials, including invoices, spreadsheets and other books and records, used in connection with and/or relevant to the City's calculation of Customer's Capacity Charge and Energy Charge. Customer shall be entitled to inspect and examine and/or have a reputable independent CPA or consultant selected by Customer audit the books and records of City relating to the determination of Customer's Capacity Charge and Energy Charge for any period. If the audit concludes that the amount may be incorrect, the City shall review the auditor's work and conclusions and, if the City disagrees with the conclusions and the parties are unable to reach agreement on a settlement, the parties shall agree on a neutral qualified third party to determine whether either party owes the other by

virtue of a deficiency or overpayment and future payments will be adjusted accordingly. If the charges over a period of at least one year are found to have been excessive by three percent or more, the City shall pay the costs of the audit and the neutral third party. If they are found to have been less than three percent, Customer shall pay those charges.

8.3 The City in its sole discretion may charge and Customer shall pay for charges for specific services more properly charged to Customer individually than to all customers as a whole, including but not limited to:

- 8.3.1 Service shutoff and/or reinstatements caused or made necessary by the actions of the Customer;
- 8.3.2 Damage to system equipment caused by the actions of the Customer;
- 8.3.3 Repairs or maintenance considered necessary by the City and caused or made necessary by the actions of the Customer;
- 8.3.4 Consumption of system water by Customer including penalty charges for unauthorized drainage by Customer; and
- 8.3.5 Service calls by Customer for problems not related to City equipment. Such charges shall be paid in addition to Capacity and Energy Charges as part of Customer's monthly billing.

8.4 Notwithstanding any provision of this agreement to the contrary, Customer Buildings with demand less than 100 MBTUs per hour may be charged a combined Energy/Capacity Rate to be called the Single Rate. The Single Rate shall be charged according to Thermal Energy usage as metered or otherwise determined by the City. Customers subject to the Single Rate shall not be subject to the Capacity refund and assessment procedures outlined in Section 10.2; for the purposes of that Section, the portion of the Single Rate which exceeds the Energy Charge shall be allocated to the Capacity Charge revenues.

8.5 Notwithstanding any provision to the contrary, the City in its sole discretion may charge and Customer shall pay charges for specific services more properly charged to an individual Customer than to all Customers as a whole, including but not limited to: 1) Service shutoff and/or reinstatements; 2) Damage to system equipment; 3) Consumption of System Water, including penalty charges for draining the system; and 4) Service calls not related to City equipment. Such charges shall be paid in addition to the Energy Charges and Capacity Charges as part of the Customer's monthly billing.

## **ARTICLE IX METERING**

9.1. Prior to Customer's Completion Date, the City shall install all equipment necessary to accurately measure and record a) Customer's Thermal Energy utilization, and b) Customer's Capacity ("Metering Equipment").

9.2. Customer shall permit the City to install Metering Equipment in Customer's Building or on Customer's premises in the area adjacent to the Point of Delivery as necessary to assure proper measurement of Customer's Thermal Energy use and Capacity demand.

9.3. The City shall own and maintain the City's Metering Equipment in good repair and operating condition as an operating expense. If the equipment is damaged and such damage is the fault of Customer, Customer shall bear the costs of repairs.

9.4. Any electricity required for the operation or maintenance of the Metering Equipment shall be supplied by the Customer at the Customer's expense.

9.5. Customer shall promptly notify the City if at any time the Customer has any reason to believe the Metering Equipment is not accurately measuring the Thermal Energy used by the Building Heating System or Customer's Capacity.

9.6. The City shall cause the testing and calibration of the Metering Equipment at the Customer's request, providing that the cost of such testing and calibration shall be done at the cost to the Customer if such testing does not disclose an inaccuracy of more than three percent 3% in measuring utilization of Thermal Energy or Capacity. Upon the discovery of any such inaccuracy, the Metering Equipment shall be promptly repaired or replaced as an operating expense to accurately measure the use of Thermal Energy or Capacity. If any measuring inaccuracy of greater than 3% is discovered, an appropriate adjustment to the Customer's Service Bill shall be made to Customer's next bill and thereafter until the time of repair or replacement.

9.7. Notwithstanding the foregoing Section 9.6, during any Billing Period during which the Metering Equipment shall fail to measure the use of Thermal Energy by a Customer, the amount of Thermal Energy used by Customer during such period shall be estimated by the City based on the Thermal Energy used by the Customer in the past and the Thermal Energy used by other customers with similar usage characteristics during the period in question.

## **ARTICLE X BILLING AND PAYMENT**

10.1 Unless Customer is otherwise notified by the City within thirty (30) days following the end of a Billing Period, the City will cause to be delivered to Customer a bill ("Service Bill") setting forth amounts due by Customer to the City for such Billing Period or any prior Billing Periods. A Billing Period shall be any period from 28 to 33 consecutive days, excepting in February, which may be 26 days, provided that in a calendar year there shall be twelve such discrete consecutive months.

10.2 The City shall have the right, upon notice to Customer, to estimate Customer's utilization of Thermal Energy during any Billing Period and submit to Customer a Service Bill based on such estimate, provided that at least quarterly, the City shall read the Metering Equipment and thereafter appropriately credit or charge Customer for the Thermal Energy it actually used in comparison with the previously estimated utilization which was billed to and paid by Customer.

10.3 A Service Bill shall be due and payable immediately upon receipt by Customer without set-off, counterclaim, abatement, or reduction by Customer. Customer's prompt payment of Service Bills shall not diminish or constitute a waiver of Customer's claims or remedies in arbitration, in subsequent legal proceedings, or in any other way, including challenging the billed amount itself.

10.4 If the Customer's Service Bill or Service Connection Charge is not paid within 30 days of delivery to Customer, the City reserves the right to assess a late fee on the unpaid balance not to exceed the greater of \$20.00 or 5% of the overdue amount.

10.5 If the Service Bill or Service Connection Charge of Customer has not been paid in full within forty-five (45) days after the date of delivery to Customer, the City may suspend the delivery of Thermal Energy to Customer, provided that suspension is allowed by the City's suspension policies and procedures and is consistent with State Law, and that Customer has been given written warning thereof at least fifteen (15) days prior to such suspension, and take such lawful action to effect collection of such bill, including commencement of legal proceedings, as the City shall deem desirable. In such event, Customer shall be liable for all costs and expenses (including reasonable attorney's fees) incurred by the City in connection with any attempt to make such collection, whether or not a legal action is commenced.

## **ARTICLE XI ADDITIONAL CUSTOMER COVENANTS AND OBLIGATIONS**

11.1 Customer shall not cause or voluntarily permit any modification or alteration to any part of the Metering Equipment or the District Heating System, without the consent of the City.

11.2 Without the consent of the City, Customer shall not cause or voluntarily permit any action that interferes with the delivery or return of hot water, the utilization of Thermal Energy, or the operation, maintenance, repair, replacement, construction, installation, expansion, removal or alteration of the District Heating System or the Metering Equipment, except in an emergency situation where life, health or property is threatened.

11.3 Customer shall not provide heat from its Building Heating System to any building other than Customer's Building without the consent of the City.

11.4 The City shall not be liable to Customer or to Customer's officers, agents, employees, lessees, licensees or invitees for any personal injury, death or property or economic damage arising out of or incidental to the operation of the District Heating System or Metering Equipment to the extent that such personal injury, death or property or economic damage was not caused by the negligence or intentional misconduct of the City or its officers, agents, employees, licensees, lessees, invitees or contractors.

11.5 Customer shall not be liable to the City or to the City's officers, agents, employees, lessees, licensees or invitees, and the City shall hold harmless and indemnify Customer from

liabilities, losses, damages, costs, expenses (including attorney's fees), claims, actions, judgments, and settlements of any nature whatsoever for any personal injury, death or property or economic damage arising out of or incidental to the operation of the District Heating System or Metering Equipment, to the extent that such personal injury, death or property or economic damage was not caused by the recklessness or intentional misconduct of Customer or its officers, agents, employees, licensees, lessees, invitees or contractors.

## **ARTICLE XII ADDITIONAL DISTRICT ENERGY COVENANTS AND OBLIGATIONS**

12.1 The City shall maintain the District Heating System in good repair and operating condition and cause it to be operated in a safe and efficient manner, capable of providing Thermal Energy in accordance with the terms of this Agreement.

12.2 The City shall secure and maintain all necessary permits, licenses and rights necessary or desirable to continue the operation of the District Heating System to meet the obligations imposed by this Agreement.

12.3 Commencing on the earlier of Customer's Completion Date or First Service Date and thereafter while this Agreement is in effect, the City shall deliver to Customer's Point of Delivery sufficient Thermal Energy to meet all Customer's Thermal Energy requirements as established in Article VI hereof, provided that the City shall not be obligated to deliver Thermal Energy at a rate in excess of Customer's Capacity, as it may be modified from time to time.

## **ARTICLE XIII OVERSIGHT OF DISTRICT HEATING SYSTEM**

Authority for oversight and operation of the District Heating System shall be consistent with the City Charter and will reside in the Montpelier City Council, which shall act through the Montpelier City Manager, unless the City Council determines that it is in the interest of the City and the customers of the District Heating System that oversight and operation be delegated to such other persons or entities as the City Council may designate.

## **ARTICLE XIV INTERRUPTION OF SERVICE**

14.1 In the event that service is interrupted for 24 consecutive hours so that the City does not fulfill its obligation to deliver Thermal Energy in accordance with the terms of this Agreement, Customer's Capacity Charge for the applicable Billing Period shall be adjusted downward to reflect the same ratio as the Thermal Energy used by Customer in such Billing Period bears to the amount of Thermal Energy Customer would have used if the City had fully performed its delivery obligation during the Billing Period.

14.2 In the event that the City is unable to supply Thermal Energy to meet the requirements of all customers served by the District Heating System in accordance with their respective agreements, the City shall attempt to allocate delivery of Thermal Energy first to each such customer in amounts as necessary to maintain the maximum warmth possible for all the City's customers, and thereafter in proportion to the Customer Capacity of each such customer, subject only to such exceptions as are necessary to protect human life, health, and safety.

14.3 Notwithstanding anything to the contrary herein, the City shall have the right without any liability to Customer, or its officers, employees, agents, or any person, to temporarily interrupt or reduce the delivery of Thermal Energy for purposes of inspection, maintenance, repair, replacement, construction, installation, removal or alteration of the District Heating System or the Metering Equipment. Except in the event of an emergency, the City shall give advance notice to Customer of such procedures and, except in the event of an emergency, the City shall schedule such work at times that will avoid hardship to Customer, such as on weekends or after business hours on weekdays.

14.4 In the event the City interrupts service and this Agreement has not been terminated, the City agrees to use its best efforts to provide Customer with a temporary source of heat, with the understanding that the City may be unable provide Customer with a temporary source of heat if Customer's service has been disconnected for non-payment, there are unsafe conditions in Customer's equipment or due to an order issued by a lawful authority.

## **ARTICLE XV TERMINATION**

15.1 Notwithstanding anything to the contrary herein, if one or more of the following events or conditions shall exist or occur, the City may elect at its option to terminate this Agreement by giving notice to Customer of such fact not less than thirty (30) days prior to the date of such termination:

- (a) Customer fails to pay any amounts due under a Service Bill to Customer within forty-five (45) days from the date thereof;
- (b) Customer fails to duly observe or perform any covenant or obligation to be observed or performed by Customer pursuant to this Agreement (other than non-payment of Service Bills) and Customer fails to cure such failure or to observe or perform within the aforesaid forty-five (45) days following a written request from the City to do so;
- (c) Customer's Building, or a substantial portion of the District Heating System, is completely or substantially destroyed or demolished, or is taken by right of eminent domain by a condemning authority other than the City; or
- (d) It becomes unlawful under any valid federal or state law, regulation or rule for either the City to deliver or the Customer to receive and pay for Thermal Energy in the form of hot water from the District Heating System.

15.2 If one or more of the following events or conditions shall exist or occur, Customer may elect at its option to terminate this Agreement by giving notice to the City of such fact no less than thirty (30) days prior to the date of such termination:

- (a) Customer's Building is permanently abandoned, destroyed, or demolished; or substantially destroyed or demolished for which rebuilding or substantial repairs are not commenced within six (6) months following such destruction;
- (b) Customer's Building, or any substantial portion thereof, is taken by right of eminent domain or becomes, in substantial part, permanently inoperable and has been so for a period in excess of six months; or
- (c) It becomes unlawful under any valid federal or state law, regulation or rule for either the City to deliver to Customer or Customer to receive and pay for Thermal Energy in the form of hot water from the District Heating System.

15.4 Without prejudice to any party's rights to damages for breach by the other party of any term or condition hereof, upon termination of this Agreement for any reason prior to the expiration of its Term, the City shall promptly bill Customer and the Customer shall pay the City within thirty (30) days after receipt of such bill for all unpaid amounts otherwise due pursuant to this Agreement.

#### **ARTICLE XVI RIGHT-OF-WAY; ACCESS TO BUILDING**

Duly authorized agents, officers, and employees of the City shall have the right to enter the Building or onto the surrounding premises of Customer at reasonable times when necessary for inspection, repair, replacement, construction, installation, removal, alteration or calibration of the Metering Equipment and the District Heating System, subject to reasonable supervision and control by Customer. Customer shall duly grant such access to the Building and surrounding premises to the extent reasonably necessary to cause and continue delivery of Thermal Energy hereunder, and so long as these activities do not impair the continued use of the premises. The City shall repair all damage caused thereby and restore all property disturbed thereby.

#### **ARTICLE XVII RECORDS AND ACCOUNTS**

The City shall keep true and complete books and records of the computations necessary to fulfill its obligations under this Agreement and shall have the books and records pertaining to Customer, including without limitation, books and records pertaining to the City's calculations of Energy Related Charges and Capacity Charges and Customer's share thereof, available for inspection in accordance with the procedures set forth in Title 1 Chapter 5 of the Vermont

Statutes Annotated or such other procedures as afford Customer reasonable and timely access to such books and records.

### **ARTICLE XVIII RESOLUTION OF DISPUTES**

The parties shall negotiate in good faith to attempt to resolve any dispute or controversy that arises between them related to the execution, performance, interpretation or breach of this Agreement, or any of its terms or conditions, including the correctness of the computational or measurement process related to calculations of Customer's Energy Charges or Capacity Charges. If the dispute is not resolved by such negotiation, either party may elect to submit the dispute to mediation or to an arbitrator selected and acting in accordance with the commercial arbitration rules of the American Arbitration Association, or to file suit in a court of competent jurisdiction.

### **ARTICLE XIX AMENDMENT AND WAIVER**

19.1 Except as provided elsewhere in this Agreement, no amendment or alteration of the terms of this Agreement shall be valid unless it is in writing and executed by both parties.

19.2 Any waiver by either of the parties of its rights concerning a default or any matter arising from or incidental to this Agreement shall not constitute a waiver concerning any subsequent default or other matter.

19.3 Failure of the City or Customer to enforce at any time any provision of this Agreement or to require at any time performance by the other party of any provision herein shall not constitute or be deemed a waiver of such provision nor affect in any manner the validity of this Agreement or the right of such party thereafter to enforce any provisions herein unless such waiver be in writing and specifically referring to such matters.

### **ARTICLE XX ASSIGNMENT: SUCCESSORS**

20.1 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties. Customer shall not transfer, sell, convey or assign Customer's interest in the Building or the premises on which the Building is located in a transaction that is a sham designed primarily or principally for the purpose of avoiding performance of Customer's obligations hereunder. The provisions of this Section 20.1 shall supplement and add to the provisions of Section 1.12.

20.2 To the extent Customer's obligations under this Agreement are transferred and assumed in accordance with this Article XX, and to that extent only, Customer shall be released from such obligations.

20.3 Except by the written consent of the City, Customer (if a corporation or business entity) shall not consolidate with or merge into any other person or convey or transfer all or substantially all of its properties and assets to any person unless: (a) such person fully and enforceably assumes in writing all Customer's obligations under this Agreement, and (b) such transaction is not a sham transaction designated primarily or principally for the purpose of avoiding performance of Customer's obligations hereunder.

## **ARTICLE XXI DISTRICT ENERGY MANAGEMENT**

The City may take any and all steps necessary to operate and maintain the District Heating System in accordance with all applicable Federal and State laws and regulations, unless otherwise restricted herein. The City shall be governed at all times with the overall goal of providing competent and effective management and conservation of the District Heating System in order to assure uninterrupted, efficient and economical service to customers.

## **ARTICLE XXII SEVERABILITY**

If any of the terms, covenants or conditions of this Agreement shall be held invalid by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application shall remain valid, enforceable and not affected thereby.

## **ARTICLE XXIII NOTICES**

Any notices, demands or requests to a party under this Agreement, or incidental thereto, shall (if in writing containing such information as is otherwise required) be deemed given to a party on the earlier of the date on which such notice, demand or request is actually delivered or two days after it is mailed with postage prepaid, registered or certified mail, addressed to such billing address.

## **ARTICLE XXIV ENTIRE AGREEMENT**

This Agreement recites the full understanding of the parties with respect to the transactions contemplated herein. Customer acknowledges that no agreements, representations or understandings of a legal, engineering or other nature have been made or relied upon by Customer except as contained herein.



EXHIBIT B

Agreement between the City and the State of Vermont regarding the Purchase and Sale of Thermal Energy

Note: This is a large document and can be downloaded from:

<http://dl.dropbox.com/u/13166259/Thermal%20Energy%20Purchase%20and%20Sale%20Agreement.pdf>

Appendix A

***Standards and Guidelines for Designing Heating Systems in Buildings Connected to a Hot Water Distribution System***

Note: This document is available for download at:

[http://dl.dropbox.com/u/13166259/Montpelier%20Customer%20Connection%20Standards\\_Appendix%20A.pdf](http://dl.dropbox.com/u/13166259/Montpelier%20Customer%20Connection%20Standards_Appendix%20A.pdf)