

AMENDED AND RESTATED DISBURSING AGREEMENT

DISTRICT ENERGY REVENUE BONDS

By and Among

HOUSING AND REDEVELOPMENT AUTHORITY  
OF THE CITY OF SAINT PAUL, MINNESOTA

CITY OF SAINT PAUL, MINNESOTA

THE PORT AUTHORITY  
OF THE CITY OF SAINT PAUL

U.S. BANK NATIONAL ASSOCIATION  
as Trustee,

and

DISTRICT ENERGY ST. PAUL, INC.

Dated as of June 1, 2012

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## AMENDED AND RESTATED DISBURSING AGREEMENT

THIS AMENDED AND RESTATED DISBURSING AGREEMENT, made and entered into as of the first day of June, 2012, by and between the Housing and Redevelopment Authority of the City of Saint Paul, a body politic and corporate organized and existing under the laws of the State of Minnesota, (the "HRA"); the City of Saint Paul, Minnesota, a home rule city and municipal corporation organized and existing under the laws of the State of Minnesota (the "City"); the Port Authority of the City of Saint Paul, a body corporate and politic duly organized and existing under the laws of the State of Minnesota (the "Port Authority"); U.S. Bank National Association, as Trustee a national banking association organized and validly existing and authorized to accept and execute trusts of the character herein provided for with its principal trust office in St. Paul, Minnesota (the "Trustee"); and District Energy St. Paul, Inc., f/k/a District Heating Development Company, d/b/a District Energy St. Paul, Inc., a Minnesota nonprofit corporation (the "Company").

### RECITALS

**WHEREAS**, the HRA, the City, the Trustee and the Company have previously entered into a Disbursing Agreement dated as of December 1, 1982 (the "Original Disbursing Agreement").

**WHEREAS**, the City has previously made a loan to the Company from the proceeds of (a) Urban Development Action Grant No. B-81-AA-27-0028; (b) a United States Department of Housing and Urban Development Community Development Block Grant; (c) tax increments derived from the Seventh Place Redevelopment Project; and (d) certain other City funds (collectively the "City Loan") which is secured by the City Loan Agreement and City Mortgage defined herein.

**WHEREAS**, the HRA and the Trustee have previously entered into an Indenture of Trust dated as of December 1, 1982 (the "Original Master Indenture") and the HRA and the Company have previously entered into a Loan Agreement dated as of December 1, 1982 (the "Original Master Loan Agreement").

**WHEREAS**, pursuant to the Original Master Indenture, the HRA has previously issued a number of series of revenue bonds (the "HRA Bonds") on behalf of the Company, which HRA were subject to the Original Disbursing Agreement, and all of which HRA Bonds have been repaid, and none of which remain outstanding.

**WHEREAS**, in 2003, the Port Authority and the HRA entered into a Joint Powers Agreement dated as of April 1, 2003 (the "Joint Powers Agreement") whereby the HRA authorized the Port Authority to issue additional bonds under the Master Indenture, and to take all actions necessary, and exercise all powers, under the Master Indenture, the Master Loan Agreement or any prior amendments or supplements thereto.

**WHEREAS**, pursuant to the Original Master Indenture and the Joint Powers Agreement, the Port Authority has issued the following revenue bonds [insert list of Port Authority Bonds] (the “Port Authority Bonds”) on behalf of the Company, which the Port Authority Bonds were also subject to the Original Disbursing Agreement.

**WHEREAS**, the Original Master Indenture and the Original Master Loan Agreement have each been amended, restated and replaced by, respectively, the Amended and Restated Indenture of Trust (the “Master Indenture”) and the Amended and Restated Master Loan Agreement (the “Master Loan Agreement”) both dated as of September 1, 2009.

**NOW, THEREFORE**, the parties hereto wish to amend and restate the Original Disbursing Agreement to reflect the ongoing obligations of the Company, and the rights and responsibilities of the Port Authority, the HRA and the City with respect to the outstanding Bonds.

## ARTICLE I

### DEFINITIONS, EXHIBITS AND MISCELLANEOUS

#### Section 1.1. Definitions.

The terms defined in this Article I shall for all purposes this Agreement have the meanings herein specified, unless the context clearly otherwise requires. All terms not defined herein shall have the meanings assigned to them in the Master Loan Agreement:

Act: Minnesota Statutes, Sections 469.152 through 469.165, as heretofore and hereafter amended or supplemented;

Accounts: (i) the accounts created and established by Section 5.2 of the Master Indenture and (ii) the accounts within the Operating Fund created and established by Section 3.6 of the Master Loan Agreement.

Additional Bonds: any Bonds, other than the June 2012 Bonds, issued pursuant to Article 6 of the Master Indenture;

Additional Loan: the loan of the proceeds of a series of Bonds by the Port Authority to the Company provided for in a Supplement to Master Loan Agreement;

Additional System: any expansion of the System, whether or not such Additional System is financed in whole or part by the issuance of Additional Bonds;

Agreement: this Amended and Restated Disbursing Agreement among the Port Authority, the Trustee, the Company, the HRA and the City as the same may from time to time be amended or supplemented as hereinafter provided;

Architect: a professionally certified architect or engineer or firm of architects or engineers registered and qualified to practice as such under the laws of the State of Minnesota and retained or employed by the Company to provide design and engineering services with respect to the System or any Project;

Authority: the Port Authority of the City of Saint Paul and any successor to functions.

Bank: a bank which issues a Letter of Credit or a Substitute Letter of Credit with respect to any series of Bonds;

Bond Closing: the date on which there is delivery of and payment for any series of Bonds.

Bond Counsel: Leonard, Street and Deinard, Professional Association, Minneapolis, Minnesota, or any other lawyers or firm of lawyers counsel experienced in matters relating to tax-exempt financing and acceptable to the Port Authority and the Company;

Bonds: the June 2012 Bonds, the Port Authority Bonds and any Additional Bonds issued pursuant to the Master Indenture;

Bond Year: the period beginning on December 1 in any calendar year and ending on November 30 in the following calendar year;

Business Day: any day other than a Saturday, Sunday or other day on which commercial banks in the city in which the principal trust office of the Trustee is located are not open for business;

Capital Expenditures: those expenditures by the Company for depreciable property or to maintain improve, upgrade or expand the System, constituting items which are not current expenses under generally accepted accounting principles;

City: the City of Saint Paul, Minnesota a home rule city and municipal corporation organized and existing under its charter and the laws of the State of Minnesota;

City Loan: collectively the loan to the Company made by the City from the proceeds of: Urban Development Action Grant No. B-81-AA-27-0028 and from (ii) United States Department of Housing and Urban Development Community Development Block Grant (the "CDBG Loan"); (iii) tax increments derived from the Seventh Place Redevelopment Project; and (iv) certain other moneys of the City;

City Mortgage: the City Mortgage, Fixture Financing Statement and Security Agreement, dated as of December 1, 1982, as amended from time to time, including amendments dated as of December 1, 1985, August 5, 1988, and July 1, 1997 and a Global Amendment to District Energy Documents and Supplemental Mortgage dated as of December 1, 2007 from the Company to the City; as the same may be amended or supplemented in accordance with the terms thereof;

Company: District Energy St. Paul, Inc., f/k/a District Heating Development Company, d/b/a District Energy St. Paul, Inc., a nonprofit corporation organized and existing under the laws of the State of Minnesota, and any permitted successor to such Company under Section 5.11.

Company Certificate: a certificate signed by the President, any Vice President or the Chief Operating Officer, or by the Treasurer, Assistant Treasurer, Secretary or an Assistant Secretary of the Board of Directors of the Company and delivered to the Trustee of the Company;

Completion Date: the date on which any Project funded hereunder for the benefit of the System is completed as provided in and in accordance with this Agreement;

Condemnation: the word Condemnation or phrase “eminent domain” as used herein shall include the taking or requisition by governmental authority or by a person, firm or corporation acting under governmental authority and a conveyance made under threat of Condemnation, provided such conveyance is made with the approval of the Trustee, which approval shall not be unreasonably withheld, and Condemnation Award shall mean payment for property condemned or conveyed under threat of Condemnation;

Construction Contract(s): any contracts or agreements entered into from time to time by the Company and providing, among other things, for the acquisition, installation or construction of, or provision of labor, materials, supplies or professional services to, a Project or any System Equipment, all of which Construction Contracts will be held by the Company and are deemed a part of this Agreement and are governed by the provisions hereof;

Construction Costs: those expenditure items set forth in Section 3.3 related to acquisition, construction or development of the System, any Additional System, any System Equipment or any Restoration;

Construction Fund: the Fund created Section 5.7 of the Master Indenture.

Cost, Cost of System or System Costs: the cost items enumerated in Section 3 and any other expenditures with respect to the System incurred in the course of performance or fulfillment of the terms and conditions of this Agreement including, without limitation, the terms and conditions of Article Four hereof;

Counsel: any attorney, duly admitted to practice law before the highest court of any state who may be counsel to the Company or the Port Authority;

Debt Service Reserve Requirement: as of any date of calculation, the sum of the Reserve Requirements applicable to each of series of Bonds then outstanding as outlined in the Master Indenture;

Equipment: the System Equipment and those items constituting equipment, as that term is defined in the Minnesota Uniform Commercial Code, and all fixtures, whether such equipment and fixtures are now owned or are hereafter acquired by the Company for use by the Company;

Exhibits: the Construction Contracts and Plans and Specifications for each Project, together with related amendments, modifications, change orders and other related documents.

Event of Default: any of the events defined as such in Section 5.1;

Fiscal Year: the fiscal year adopted by the Company;

Franchise Fees: the franchise fees, or any moneys paid to the Company in lieu of franchise fees, to be collected and remitted to the City, or otherwise applied by the Company pursuant to the Franchise Ordinance;

Franchise Ordinance: City of Saint Paul Ordinance No. 16947 initially adopted July 20, 1982 as amended by Ordinance No. 16962, adopted October 5, 1982, by Ordinance No. 17482 adopted August 5, 1987, by C.F. No. 03-484 adopted July 23, 2003 and by Ordinance No. 07-1108 adopted December 12, 2007, and each approved by the Mayor, which Franchise Ordinance is codified as Appendix F, Saint Paul, Minnesota, Legislative Code, as such ordinance may be further amended from time to time, which Franchise Ordinance grants to the Company a non-exclusive franchise to operate within the City a hot water district heating distribution system;

Funds: (i) the funds created and established by Section 5.2 of the Master Indenture and (ii) the Operating Fund created and established by Section 3.6 of the Master Loan Agreement;

Independent Accountant or Accountant: a nationally recognized certified public accountant or firm of certified public accountants registered and qualified to practice as such under the laws of the State of Minnesota;

Independent Consultant: a nationally recognized person or firm who is not an employee or officer of the Company appointed by the Company and satisfactory to the Trustee, qualified to pass upon questions relating to the financial affairs of district heating systems or utilities for the local furnishing of water, steam, gas or electricity and having a favorable reputation for skill and experience in the financial affairs of district heating systems or utilities for the local furnishing of water, steam, gas or electricity;

Independent Insurance Consultant: a person or firm who is not an employee or officer of the Company appointed by the Company and satisfactory to the Trustee, qualified to survey risks and to recommend insurance coverage for district heating systems or utilities for the local furnishing of water, steam, gas or and services and organizations engaged in like operations and having a favorable reputation for skill and experience in such surveys and such recommendations, and who may be a broker or agent with whom the Company transacts business;



Internal Revenue Code or Code: the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder;

June 2009 Bonds: The \$5,000,000 Tax-Exempt Variable Rate District Heating Revenue Bonds, Series 2012-5 Series T and the \$1,205,000 Taxable Variable Rate District Heating Revenue Bonds, Series 2012-6 Series U issued by the Port Authority;

Letter of Credit: any letter of credit issued to support a series of Bonds, and any substitute or replacement therefor;

Loan: the loan or loans made by the Port Authority to the Company from the proceeds of the Bonds, exclusive of any accrued interest paid by the original purchaser of the Bonds upon the delivery thereof, but including the underwriting discount, if any, in connection with the sale of Bonds by the Port Authority to the original purchaser;

Master Indenture: the Amended and Restated Indenture of Trust between the Port Authority and the Trustee, dated as of September 1, 2009, as from time to time amended or supplemented;

Maturity: when used with respect to any Bond shall mean the date on which the principal of such Bond becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise;

Mortgage: the Amended and Restated Mortgage, Fixture Financing Statement and Security Agreement dated as of September 1, 2009, from the Company to the Trustee and the Bank, as the same may be amended or supplemented in accordance with the terms thereof;

Net Proceeds: with respect to any property insurance payment or Condemnation award, the amount remaining therefrom after payment of all reasonable expenses incurred in the collection thereof;

Official Action: the earliest resolution or other action taken by the Port Authority with respect to a Project and qualified as “official action” as that term is used in the contest of industrial development bonds under Section 103(b) of the Code;

Opinion of Counsel: a written opinion of counsel, who may be counsel for the Port Authority or the Company;

Original Disbursing Agreement: The Disbursing Agreement dated as of December 1, 1982 and entered into by and among the HRA, the City, the Trustee and the Company;

Permitted Encumbrances: the “Permitted Encumbrances” defined in Section 6;

Plans and Specifications: the plans and specifications for the acquisition, construction and installation of the System, or any Additional System and any modifications thereto, all of which

Plans and Specifications will be held by the Company and are deemed part of this Agreement; and are governed by the provisions hereof;

Project: the System, any Additional System, or a Restoration;

Project Supervisor: the current President of the Company, any Vice President, or a licensed architect or engineer authorized by a duly adopted resolution of the Company's Board of Directors, and the Project Supervisor shall have full authority to sign any certificate or statement of any kind authorized by this Agreement to be given by the Project Supervisor to the Port Authority or the Trustee, both of whom may rely on any certificate or statement so signed as that of the Project Supervisor and shall not be affected by any notice to the contrary; provided, however, that if the original Project Supervisor, or any successor appointed hereunder, should become unavailable, unable or unwilling to take any action or make any certificate provided for in this Agreement, a successor shall be appointed by the Company by a duly adopted resolution of the Company's Board of Directors, subject to acceptance by the Port Authority and the Trustee, and if the Company fails to make such designation within ten days following such event, the Trustee may appoint as such successor any architect or engineer licensed under the laws of the State of Minnesota;

Property: all real estate of the Company, the System, the System Equipment, any Additional System, any Restoration and any Improvements, as they may at any time exist, and all other property and rights referred to or intended to be covered by this Agreement;

Reimbursement Agreement: any Reimbursement Agreement between the Company and a Bank pursuant to which a Letter of Credit is issued;

Representative: the Chairman of the Port Authority or an officer of the Company, or any other person at any time designated to act on behalf of the Port Authority or the Company, as the case may be, as evidenced by a written certificate furnished to the other party and the Trustee containing the specimen signature of such person and signed the Port Authority by its Chairman or for the Company by an officer;

Restoration: the use of Net Proceeds by the Company to repair, restore or rebuild that portion of the System or System Equipment damaged or destroyed or taken by condemnation;

Service Agreements: those Hot Water Heating Service Agreements between the Company and the persons identified therein as "Customers", and any rules and regulations relating thereto, providing for the supply of hot water thermal energy by the Company to the Customers;

Supplemental Indenture: any indenture supplemental to the Master Indenture entered into pursuant to Article XII of the Master Indenture in connection with the issuance of a series of Bonds or otherwise;

Supplemental Loan Agreement: any loan agreement entered into as a supplement to the Master Loan Agreement in connection with the issuance of a series of Bonds or otherwise;

System: the hot water district heating system constructed, acquired and installed or to be constructed or installed, by the Company with the proceeds of the Bonds and the City Loan; provided that "System" as used herein shall include, except as otherwise noted, any Additional System, the construction, acquisition and installation of which is financed by Additional Loans or expenditures of the funds of the Company, whether or not any Additional System is functionally integrated with the System; and provided further that "System" as used herein shall further include any Restoration; and provided further that "System" shall not include "conversion facilities" installed by or on behalf of System customers for the purposes converting System hot water into heat energy for use in a particular structure's heating or water system to enable it to use the heat energy delivered by the System;

System Equipment: any and all (i) fixtures or tangible personal property of the Company, now or hereafter attached or affixed to the System, (ii) other tangible personal property of the Company now or hereafter located within or used in connection with the System and acquired, in whole or in part, from Bond proceeds together with any additions to, replacements of and substitutions for any of the foregoing;

Term of this Agreement: the period of time commencing on the date of this Agreement and terminating on the final Maturity date last of the of the Bonds to mature;

Trustee: U.S. Bank National Association, Saint Paul, Minnesota, and any permitted successor as trustee under Article 10 of this Indenture;

Section 1.2. Rules of Interpretation.

A. All references in this instrument to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed.

B. The words "herein", "hereof" and "hereunder" and other words of similar import without reference to any particular Article, Section or subdivision refer to this Agreement as a whole and not to any particular Article, Section or other subdivision unless the context clearly indicates otherwise.

C. The terms defined in this Article shall include the plural as well as the singular.

D. All accounting terms not otherwise defined herein have the meanings assigned to them by the American Institute of Certified Public Accountants or in accordance with generally accepted accounting principles.

E. All computations provided herein shall be made in accordance with generally accepted accounting principles.

F. Articles, Sections, subdivisions, and clauses mentioned by number only are those so numbered which are contained in this Agreement.

G. This Agreement shall be interpreted in accordance with and governed by the laws of the State of Minnesota.

H. The Table of Contents and titles of articles and sections herein are for convenience only and are not a part of this Agreement

Section 1.3. Company Acts.

Where the Company is permitted or required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

Section 1.4. Benefit of this Agreement.

This Agreement is made for the benefit of the Company, the Port Authority, the City and any Bank which might, from time to time, have issued a Letter of Credit to secure any Bonds. In the case of the Bank, which is not a signatory hereto, the Bank shall be deemed and have the rights appertaining to the status of a third party beneficiary of the obligations and duties of the Company hereunder, or otherwise as expressly stated herein.

Section 1.5. Review of Supporting Documentation.

The Construction Contracts and Plans and Specifications identified herein, or true and correct copies thereof, are, for the convenience and discretion of the parties hereto, held by the Company and are not physically attached to this Agreement. In any case, such Exhibits shall nevertheless be deemed to be exhibits hereto and governed by the provisions hereof. The Company shall make such Exhibits, together with related amendments, modifications, change orders and other related documents, available for inspection at the offices of the Company by any other party hereto, or any person authorized by such party, during normal business hours.

## ARTICLE 2

### REPRESENTATIONS OF AUTHORITY AND COMPANY

#### Section 2.1. Representations by the Port Authority.

The Port Authority makes the following representations as the basis for its covenants and agreements herein:

(1) The Port Authority is a body politic and corporate organized and existing under the laws of the State of Minnesota and is authorized to enter into and perform its obligations under this Agreement.

(2) The execution and delivery of this Agreement and the performance of all covenants and agreements of the Port Authority contained in this Agreement and of all other acts and things required under the Constitution and laws of the State of Minnesota to make this Agreement a valid and binding obligation of the Port Authority in accordance with its terms g are authorized by the Act and have been duly authorized by resolutions of the governing body of the Port Authority.

(3) Under the provisions of the Master Indenture, the Port Authority's interest in this Agreement and certain payments due hereunder are pledged and assigned to the Trustee as security for the payment of the principal and interest and premium, if any, on the Bonds.

#### Section 2.2. Representations by the Trustee.

The Trustee makes the following representations as the basis for its covenants herein:

(1) The Trustee is a business corporation duly incorporated under the laws of the State of Minnesota, is in good standing and duly authorized to conduct its business in Minnesota, has power to enter into and execute this Agreement and by proper corporate action has authorized the execution and delivery of this Agreement.

(2) The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof have been duly authorized by all necessary corporate action and do not and will not conflict with or result in a breach of any of the terms and conditions of Articles of Incorporation, its Bylaws, any restriction or any agreement or any instruments to which the Trustee now a party or by which it or its property is bound and do not and will not constitute a default under any of the foregoing and do not and will not result in the creation or imposition of any lien, charge or encumbrance of any nature upon the Trustee's property contrary to the terms of any such instrument or agreement.

(3) There are no actions, suits or proceedings pending, or to the knowledge of the Trustee, threatened, against the Trustee or any property of the Trustee in any court or before any federal,

state, municipal or other governmental agency which, if decided adversely to the Trustee would have a material adverse effect upon the ability of the Trustee to carry out its obligations hereunder.

Section 2.3. Representations by the Company.

The Company makes the following representations as the basis for its covenants herein:

(1) The Company is a nonprofit corporation duly incorporated under the laws of the State of Minnesota, in good standing and duly authorized to conduct its business in Minnesota, has power to enter into and execute this Agreement and by proper corporate action has authorized the execution and delivery of this Agreement.

(2) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and by the Master Indenture, and Master Loan Agreement, and the fulfillment of the terms and conditions hereof have been duly authorized by all necessary corporate action and do not and will not conflict with or result in a breach of any of the terms or conditions of its articles of incorporation, its bylaws, any restriction or any agreement or instruments to which the Company is now a party or by which it is bound, or to which any property of the Company is subject and do not and will not constitute a default under any of the foregoing-and do not and will not result in the creation or imposition of any lien, charge or encumbrance of any nature upon the Company's property contrary to the terms of any such instrument or agreement.

(3) The Company is an organization described in Section 501(c)(3) of the Code.

(4) There are no actions, suits, or proceedings pending or, to the knowledge of the Company, threatened against the Company or any property of the Company in any court or before any federal, state, municipal or other governmental agency, which, if decided adversely to the Company would have a material adverse effect upon the Company or upon the business or property of the Company and the Company is not in default with respect to any order of any court or governmental agency.

(5) The Company is not in default in the payment of the principal of or interest on any indebtedness for borrowed money nor in default under any instrument or agreement under and subject to which any indebtedness for borrowed money has been issued.

(6) The Company has reviewed and approved the provisions of the Master Indenture and the Master Loan Agreement.

(7) The proceeds of the City Loan were disbursed for a "public purpose" in compliance with all applicable laws, regulations and limitations applicable thereto, and in accordance with their requirements of the Original Disbursing Agreement.

## ARTICLE 3

### CONSTRUCTION FUND

#### Section 3.1. Deposits to the Construction Fund.

The following sums shall be from time to time deposited in the Construction Fund and disbursed accordance with Section 3.2 hereof:

(1) The proceeds of the Bonds, except for sums required by the Master Indenture, including any supplement thereto, to be deposited in the Debt Service Reserve Account, or in any other Fund or Account specifically identified therein.

(2) The proceeds of any other loan, contribution, grant, bequest, donation or contribution by any person which is specifically designated pursuant to the terms and conditions or agreements relating thereto for the construction, reconstruction, expansion, improvement or renovation of the System, any Additional System, or any System Equipment.

(3) Net Proceeds, funds of the Company, and any other sum received by the Company, required to be used for a Restoration or designated by the Company for a Restoration.

#### Section 3.2. Disbursement from Construction Fund.

(1) The Trustee shall disburse money from the Construction Fund, to or upon the order of the Company, in payment, or reimbursement for the payment, of items of Construction Costs upon receipt by the Trustee of a Company Certificate in the form and substance required by Section 4.3: except that until each Completion Date the Trustee is directed to retain in the Construction Fund a sum equal to five percent (5%) of the estimated total of Construction Costs for the Project for which disbursements are being made; provided, however, that the five percent (5%) retainage provided for in this subsection 3.2(1) shall not be required if and to the extent the Company has received a surety bond, payment and performance bond, letter of credit or other unconditional, irrevocable form of security for such retainage.

(2) The Trustee shall create and maintain a separate account within the Construction Fund for each series of Bonds, and a separate account for each deposit of Net Proceeds; provided that to the extent the System, any Additional System or a Restoration may be so unified that the acquisition, construction and development of any two or more thereof may appropriately be treated as a single Project, as set forth a Company Certificate, the accounts relating thereto may be combined and accounted for together.

#### Section 3.3. Construction Costs.

Each of the following terms shall be considered a "Construction Cost" when incurred by the Company, and shall be eligible for direct payment to the provider of the good or

service, or reimbursement to the Company, from the Construction Fund, to the extent and in the manner set forth in Sections 4.3 and 4.4 and subject to the provisions of the Act;

(1) all expenses incurred and to be incurred in connection with the acquisition, construction and installation of a Project, the contract price of all labor, services, materials, supplies and equipment furnished under any contract for construction and installation of the Project or otherwise incurred in connection therewith, including the cost of all System Equipment, power plants and all appurtenances thereto, and of all rights-of-way for access and utility connections to and from the System, and all fees required for recording all financing statements and any title documents relating to the City Mortgage, the Master Indenture, the Master Loan Agreement and any series of Bonds;

(2) the expense of preparation of the Plans and Specifications for the System, or any Project, and other facilities necessary or desirable in connection therewith, and all other architectural, engineering, field supervisors, owners oversight reps and supervisory services incurred and to be incurred in the planning, construction and completion of the System or any Project;

(3) all legal, Bond Counsel, City Attorney, abstractors', financial and accounting fees and engraving costs and other expenses incurred and to be incurred in connection with the development of the System, the authorization, sale and issuance of Bonds, and the preparation of this Agreement and supplements thereto, and all other documents necessary to any Bond Closing or required by this Agreement, the City Mortgage, the Master Indenture, the Master Loan Agreement and any series of Bonds and incurred on or before each Completion Date or in connection with the establishment of each Completion Date including compliance with any governmental or administrative rules or regulations on or before such date;

(4) each of the following, (i) premiums on all insurance required to be taken out and maintained pursuant to this Agreement, (ii) premiums, policy issuance fees or other expenses associated with insurance or surety bond coverage relating to interest payable on the Bonds if the Company is the insured or beneficiary thereunder, and (iii) annual fees, issuance fees or other expenses associated with any Letter of Credit or other credit facility relating to the Loan, any Additional Loan or any series of the Bonds; provided that, in any case, the expenses fees and other costs provided for in this subsection (4) shall be payable from the Construction Fund only to the extent such items may be, or become, due and owing prior to a Completion Date;

(5) all expenses incurred in seeking to enforce any remedy against any contractor, or any subcontractor or any supplier in respect of any default under any contract with such person;

(6) all deed taxes, mortgage registry taxes, recording fees, permit fees and other taxes and license and registration fees of every nature whatsoever incurred and to be incurred in connection with acquisition or completion of the System including the financing thereof;



(7) the cost of other labor, services, materials, supplies and equipment necessary to complete the construction, acquisition and installation of the System, or any Project, including but not limited to the System Equipment;

(8) if the Project is financed by the issuance of Bonds, and an Additional Loan to the Company of the proceeds thereof, all fees and expenses of the Trustee and Paying Agent under the Master Indenture that become due on or before each Completion Date or in connection with the establishment of each Completion Date;

(9) all interest accruing on money borrowed by the Company for financing of the Cost of the System, or any Project, including interest accruing on the Bonds during the construction period and for six months thereafter in excess of any Bond proceeds initially deposited in the Bond Fund at Bond Closing for such purpose;

(10) without limitation by the foregoing, all other expenses which under generally accepted accounting principles constitute necessary capital expenditures for the completion of the System, not including working capital or expendable supplies or taxes, assessments, or other charges (all of which are nevertheless to be supplied by the Company from its own funds without reimbursement, except as provided in subsection (12) below);

(11) all advances, payments and expenditures made or to be made by the Port Authority or the Trustee and any other person with respect to any of the foregoing expenses; and

(12) all general, administrative and overhead expenses, including working capital, of the Company during the period of construction of the System, to the extent that revenues of the System, or amounts otherwise deposited in the Operating Account, shall not be available to pay Operating Expenses.

The Company shall be solely responsible for paying all Construction Costs with respect to an Additional System until the issuance of the Additional Bonds or proceeds of the financing therefore or with respect to any Restoration, until receipt of Net Proceeds related thereto. Thereafter all Construction Costs may be paid or reimbursed from available monies in the Construction Fund to the extent and in the manner permitted Sections 4.3 and 4.4. If, however, such monies are insufficient to pay in full Construction Costs payable therefrom or are otherwise unavailable to pay any Construction Costs, the Company shall nevertheless promptly pay so much of such Costs as may be in excess of such available monies in the Construction Fund. The Company shall not by reason of the payment of such excess Costs be entitled to any reimbursement from the Port Authority (except from the proceeds of any Additional Bonds issued) in excess of any monies available therefor in the Construction Fund or for any abatement or diminution of the Basic Payments or Additional Charges due under the Master Loan Agreement.

Construction Costs shall be separately computed for each Project and shall not be aggregated with Construction Costs for any other Project, except that Construction Costs for two or

more Projects may be aggregated in the event that the accounts within the Construction Fund for the related Projects are combined pursuant to Section 3.2. Nothing herein shall be construed to limit the right of the Company to allocate or pro rate Construction Costs between Projects to the extent the Company, Architect and Independent Accountant deem such allocation or pro-ration to be necessary, appropriate or desirable.

Section 3.4. Transfers on Completion Date.

On the Completion Date of any Project financed whole or part from Bond proceeds, any balance of such Bond proceeds remaining in the Construction Fund in excess of any amount retained therein under subsection 4.5(1)(A)(ii) shall be disbursed by the Trustee to the Company or its order in such amount as may be necessary (and all thereof shall be disbursed if necessary) to pay, or to reimburse to the Company for the payment of, any part of the Construction Costs which has not theretofore been reimbursed to the Company, as the case may be, in accordance with the provisions of Sections 4.3 and 4.4. Any balance of such Bond proceeds remaining in the Construction Fund in excess of any amount retained therein under subsection 4.5(1)(A)(ii) to secure completion by any contractor shall be transferred by the Trustee to the Redemption and Purchase Account or to such other Fund or Account as the Company may direct, and as is allowed by the Master Indenture. Any balance of funds which are not Bond proceeds remaining in the Construction Fund in excess of any amount retained therein under subsection 4.5(1)(A)(ii) to secure completion by any contractor shall be transferred, disbursed or applied as the Company shall direct. Any sums retained in the Construction Fund shall be disbursed upon certification and approval as required under Sections 4.3 and 4.4.

## ARTICLE 4

### COVENANTS AND AGREEMENTS OF THE COMPANY

With respect to acquisition, construction and development of the System and any Additional System, and with respect to any Restoration, the Company covenants and agrees to comply with the terms and conditions of this Agreement and this Article 4, as such terms and conditions shall apply to each such Project.

#### Section 4.1. Projects.

In connection with the acquisition, construction, equipping and development of the System, each Additional System and any Restoration:

(1) Plans and Specifications and Architects Contract. Plans and Specifications will be prepared for each Project in excess of \$250,000 by the Company and shall be made available by the Company for review in accordance with Section 1.5. The Company will cause each Project to be constructed, installed and equipped in accordance with the Plans and Specifications applicable thereto. The Plans and Specifications may be modified and amended at the discretion of the Company if such modifications and amendments are deemed by the Company to be necessary or desirable to the completion of the Project, do not materially reduce the size or change the character of the Project and will not cause the total Construction Costs to exceed the balance then remaining in the Construction Fund and other funds of the Company or available to the Company to pay such Costs. The Company shall make such Plans and Specifications, together with related amendments, modifications, change orders and other related documents, available for inspection at the offices of the Company by any other party hereto, or any person authorized by such party, during normal business hours.

(2) Construction Contracts. The Company shall enter into appropriate Construction Contracts for each Project. Each Construction Contract shall provide that the Contractor will perform its obligations therein for the Trustee at the Trustee's request should the Trustee succeed to the Company's interests in the construction Contract after default by the Company. A Construction Contract may be amended or supplemented at the discretion of the Company if such amendments or supplements are deemed by the Company to be necessary or desirable and will not cause the total Construction Costs to exceed then remaining balance in the Construction Fund and other funds of the Company available to pay such Costs. The Company shall make such Construction Contracts, together with related amendments, modifications, change orders and other related documents, available for inspection at the offices of the Company by any other party hereto, or any person authorized by such party, during normal business hours.

(3) Installation and Construction. The Company will cause each Project to be installed and constructed substantially in accordance with the Plans and Specifications applicable thereto and wholly within the boundary lines of real property owned or leased by the Company, or permitted to

be used by the Company for the System under the Franchise Ordinance, and the Company will provide, or cause to be provided, all other improvements, access roads, utilities, parking facilities, and other items required for a facility fully operable for use as a hot water distribution system.

(4) Survey. For certain Projects on real property owned or leased by the Company, the Company will obtain a plat or survey prepared by a registered land surveyor, containing the correct legal description of and showing the dimensions, area, and the location' of all improvements, easements, encroachments and other visible encumbrances upon, or included within, the Project and a certificate of the registered land surveyor or the Architect showing that the Project is laid out, is within the real property owned or leased by the Company.

(5) Completion. The Company will complete each Project as promptly as practicable with all reasonable dispatch except only as completion may be delayed by strikes, riots or acts of God or the public enemy, shortages of materials or supplies or any other reason beyond the reasonable control of the Company for which a reasonable extension of the time of completion shall be granted as determined by the Trustee provided that if the Project is not completed by that date there shall be no resulting liability on the part the Port Authority and no abatement or diminution in the payments required to be made by the Company under the Master Loan Agreement or Reimbursement Agreement. The Completion Date for each Project in excess of \$250,000 financed hereunder or by any Additional Loan shall be established by the Company with the consent of the Trustee which consent shall not be unreasonably withheld.

(6) Insurance. During the construction period for Project, and until the related Completion Date, the Company shall procure and maintain, or cause to be procured and maintained, property and liability insurance at not less than the limits of coverage or liability required by the Master Loan Agreement.

(7) Payment and Performance Bonds. Before any claim for work, materials, and equipment furnished under a Construction Contract is certified for payment by the Project Supervisor for any Construction Contract in excess of \$250,000 or such lesser amount as the Company deems necessary in its sole discretion and paid from the Construction Fund by the Trustee, a payment and performance bond shall be secured by the Company from the contractor or each subcontractor, executed by a responsible surety company authorized to do business in the State of Minnesota, naming the Trustee and as co-obligees, in a penal sum equal to the entire amount to become payable under the applicable contract and conditioned as required by the aforesaid statute for the completion of the work in accordance with the Plans and Specifications and for the payment of all claims of subcontractors (or sub-subcontractors) and suppliers. Any sums which become payable pursuant to the provisions of any bond so furnished shall be used and applied as provided in Section 4.6. Said bonds shall be delivered by the Company to the Trustee before such contractor commences work. The Company shall not be required to have a bond for work performed by it or to secure a bond from a vendor of any System Equipment who is not responsible for the installation thereof.

(8) Title Assurances and Recording. The Company will cause to be delivered such title opinion, policy or binder as is required under Section 4.7, all financing statements, and any title curative documents that the Trustee, the Company, counsel to the Trustee or Bank or Bond Counsel may deem necessary or desirable to perfect or protect the title of the Company in the Project, the lien of the Mortgage and City Mortgage thereon, and the lien of the Master Indenture.

Section 4.2. Authorization by Port Authority

In accordance with Section 474.03(7) of the Act, the Company is authorized by the Port Authority, and the Company, pursuant to such authorization, agrees:

(1) to acquire, construct and install the System and the System Equipment as provided in Section 4.1, upon real property owned by the Company or which the Company is entitled to use under the Franchise Ordinance;

(2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, with any other persons, firms or corporations, and in general to do all things which may be requisite or proper for acquiring, constructing and installing each Project;

(3) pursuant to the provisions this Agreement, to pay fees, costs and expenses incurred in the acquisition, construction and installation of each Project from funds made available therefor in accordance with this Agreement or otherwise;

(4) so long as the Company is not in default under any of the provisions of this Agreement, the Master Loan Agreement or the Mortgage to exercise all authority hereby conferred, which is granted and conferred irrevocably to each Completion Date and thereafter until all activities in connection with the acquisition, construction and installation of each Project shall have been completed.

Neither the authorization granted in this Section nor any other provision of this Agreement shall be construed as making the Company an agent or joint venturer with the Port Authority.

Section 4.3. Disbursements from Construction Fund.

(A) The Port Authority has in the Master Indenture authorized and directed the Trustee to disburse money from the Construction Fund, to or upon the order of the Company, in payment or reimbursement of all items of Construction Costs enumerated in Section 4.1 and certified in writing by the Project Supervisor or the Representative of the Company to the persons entitled thereto except that until such Completion Date the Trustee is directed to retain in the Construction Fund an amount equal to five percent (5%), or such lesser amount as may be authorized pursuant to Section 3.2(1) hereof, of the Construction Costs enumerated in subsections (1), (2), (7) and (10) of Section 3.3 for the Project. Construction Costs incurred in the course of fulfilling the obligations of the Company described in Section 4.1(4), (5), (6), (7) or (8) and

Construction Costs enumerated in Section 3.3(3), (4), (5), (6), (8), (9), (12) and, to the extent related to the foregoing, (12), may be paid or reimbursed in full upon receipt by the Trustee of any statement of the payee covering such expenses endorsed by the payee and approved by the Project Supervisor, or, with respect to fees of Bond Counsel or Authority's counsel, or Trustee's counsel, the Port Authority respect to all other Construction Costs, each certificate of the Project Supervisor shall contain the following additional information:

(1) the amount and nature of each item of Construction Cost and the name and address of the payee, with the payee's statement and if reimbursement is requested, evidence of payment thereof attached;

(2) a statement that each item for which payment or reimbursement is requested is or was necessary in connection with the Project and none of such items has formed the basis for any previous payment from the Construction Fund, with a copy of the Architect's certificate or orders, any, with respect to work completed or materials or supplies delivered for which payment or reimbursement is requested:

(3) a statement of estimated remaining Construction Costs on the date of the certificate (whether or not such estimated total Construction Cost exceeds the available proceeds of the Bonds), itemized to show separately the total amount then and theretofore certified for payment and the total amount remaining to be paid (A) under any Construction Contract (as affected by any modifications or additions to the Plans and Specifications since the last certificate) and (B) for all other Construction Costs;

(4) with respect to all Construction Cost items incurred and to be incurred under any Construction Contract which provides for the retention of a portion of the contract price, a statement that the total amount then and theretofore certified for payment of such Construction Costs does not exceed the net contract price after deducting any portion still withheld by the Company:

(5) a statement that each contractor, subcontractor and materialman has filed with the Project Supervisor receipts or waivers of liens for all amounts theretofore above \$50,000 or such lesser amount as the Company deems necessary in its sole discretion certified for payment, or any amount therein certified for reimbursement to the Company for payment, for work, materials and equipment furnished by him or that there is on file with the Project Supervisor a cancelled check endorsed by the contractor, subcontractor or materialman evidencing such payment or a letter from the general contractor, if any, to the Project stating that all such payments have been made and indemnifying the Company from any claims for such payment, and attaching true and correct copies thereof: and

(6) a statement that the Company is not then in default under this Agreement, nor has any event occurred which but for the lapse of time would constitute an event of default under this Agreement.

Section 4.4. Additional Requirements for Disbursement From Construction Fund.

No money shall be disbursed from the Construction Fund (other than for Construction Costs which do not require the additional information set forth in Section 4.3) with respect to a Project until there has been filed in accordance with Section 1.5:

(1) Plans and Specifications for the Project covering the work, including acquisition and installation of any System Equipment, for which payment is requested;

(2) A copy of each Construction Contract or purchase agreement covering the work or items for which payment is requested and

(3) Each payment and performance bond required by this Agreement covering the work for which payment is requested.

Upon request of the Trustee, the Company shall furnish the receipts or lien waivers or cancelled checks from such contractors, subcontractors and materialmen specified in Subsection 4.3(5) above, and any other documentation which may be deemed necessary by the Trustee as a condition for disbursement of money from the Construction Fund.

If at any time the Project Supervisor estimates in accordance with Section 4.3(3) that the total Construction Cost of the Project remaining to be paid from the Construction Fund exceeds the total of the amount of money which in the judgment of the Trustee will be available in the Construction Fund to pay such Construction Costs, the Trustee may require that the Company forthwith deposit in the Construction Fund cash or securities acceptable to the Trustee, in an amount up to 100% of the estimated deficiency.

Section 4.5. Establishment of Completion Date.

The Completion Date shall be that date on which the Trustee shall acknowledge receipt of the following items relating to a Project, which the Company shall furnish to the Trustee no later than 30 days after completion of the Project:

(1) a certificate signed by the Project Supervisor containing an updated description of the System and System Equipment and stating that:

(A) the acquisition, construction and installation of the buildings, improvements, equipment and all other facilities comprising the Project have been completed in substantial conformity with the Plans and Specifications; and

(B) the entire Construction Cost of the Project has been paid, or is then due and payable in accordance with a certificate of the Project Supervisor and Company Representative submitted in accordance with Section 4.3 hereof, except any amount (not to exceed the amount retained under Section 3.2(1)) which the Trustee agrees to retain in the Construction Fund to secure completion by any contractor; and

(C) the Project conforms to all applicable zoning (by special use permit or otherwise), planning and building regulations and laws, environmental protection or pollution control laws and regulations and is suitable and sufficient for efficient operation for the purpose specified in Section 4.1(3); and

(D) the certificate is given without prejudice to the rights against third parties which may exist at the date thereof or which may subsequently come into being; and

(E) final lien waivers from all contractors involved in the Project have been received; and

(F) the Company holds good and marketable title to the Project, including all real and personal property comprising the Project, free and clear of liens prior to or on a parity with the lien of the Mortgage, except Permitted Encumbrances, or in the alternative an owner's policy of title insurance to the same effect; and

(G) if applicable, a mortgagee's policies of title insurance has been issued by a title insurer qualified to issue such policies in the State of Minnesota insuring the first and prior lien of the Mortgage, and the lien of the City Mortgage, in an amount equal to the insurable value of real property owned by the Company, subject only to Permitted Encumbrances; and

(H) all recordings and filings of the instruments pertaining to the Project which are required to perfect (a) the security interest of the Trustee and the Bank under the Mortgage, (b) the security interest of the City under the City Mortgage, and (c) the Trustee's security interest in the Port Authority's right, title and interest, including its rights to receive the Basic Payments, and other sums payable to it or to the City under this Agreement or Loan Agreement and in the System Equipment against all creditors, subsequent purchasers and encumbrances have been made, subject to the effect of bankruptcy, reorganization, and insolvency laws affecting creditors' rights generally and specifying the further filings and renewals required in order to continue perfection of such security interests for so long as any Bonds remain outstanding or the City Loan remains unpaid; and

(I) all permits necessary for the operation, occupancy and use of the Project have been obtained and are in full force and effect.



(2) if there is any surplus in the Construction Fund to be transferred as provided in Section 3.4, a statement from the Project Supervisor, if necessary, describing each item for which a Working Capital Expense has been incurred and certifying the total amount of Working Capital Expenses incurred or to be incurred.

Section 4.6. Enforcement of Contracts.

In the event of default of any contractor or subcontractor under any Construction Contract or in the event of a breach of warranty with respect to any materials, workmanship or performance, the Company will promptly proceed, either separately or in conjunction with others, to exhaust its remedies against the contractor, subcontractor or vendor in default and against any surety on a bond securing the performance of such contract, provided, however, that the Company may on the advice of its counsel and with the Trustee's consent refrain from exhausting such remedies if determined by the Company not to be in its best interests and not necessary to complete the Project. The Company will promptly advise the Trustee of the steps it intends to take in connection with any such default. Any amounts recovered pursuant to any bond or by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred such recovery, other than any amounts resulting from the loss income, shall be paid into the Construction Fund if received before the Completion Date, and otherwise shall be paid into the Bond Fund, provided that the Company may obtain reimbursement for any payments made by the Company in connection with such action as an item of Cost as provided in Section 4.3.

Section 4.7. Title Assurance.

At the Bond Closing for the Series T Bonds, Series U Bonds and each series of Additional Bonds, the Company shall cause to be furnished to the Trustee adequate assurances showing with respect to the System good and marketable title in the Company and a mortgage interest held by the Trustee and Bank, and City, as appropriate, subject to Permitted Encumbrances only, in one of two forms:

(1) owner's and mortgagee's policies of title insurance (or at Bond Closing a title binder) to that portion of the Project consisting of real property in an amount equal to at least the insurable value of the real property and improvements thereon and payable to the Company, with respect to the owner's policy, to the Bank and the Trustee as their interests shall appear with respect to the Mortgage, and to the City, with respect to the City Mortgage; or

(2) a title opinion of counsel to the Company; provided that in either case the policy (or binder) or opinion may exclude as an exception any mechanics or materialmen's liens if payment and performance bonds will be or have been secured as provided in Section 4.1(6).

## ARTICLE 5

### EVENTS OF DEFAULT AND REMEDIES

#### Section 5.1. Events of Default.

Anyone or more of the following events is an Event of Default under this Agreement:

(1) if an Event of Default shall occur and be subsisting under any Reimbursement Agreement, Master Loan Agreement, the Mortgage or the City Mortgage;

(2) the Company shall fail to observe and perform or shall breach any other covenant, condition or agreement on its part under this Agreement for a period of one hundred twenty (120) days after mailing of a notice to it by the Port Authority or the Trustee, specifying such default or breach and requesting that it be remedied, unless the Trustee shall agree in writing to an extension of such time prior to its expiration for such longer period as may be reasonably necessary to remedy such default provided that the Company is proceeding with reasonable diligence to remedy the same.

#### Section 5.2. Remedies.

Whenever any Event of Default shall have occurred and be subsisting and subject (in the case of the Port Authority only) to the provisions of Section 9.13 of the Master Loan Agreement, any one or more of the following remedial steps may to the extent permitted by law be taken:

(1) The Trustee, the Bank, or the Port Authority (with the prior written consent of the Trustee) may take whatever action at law or in equity may appear necessary or appropriate to collect all sums then due and thereafter to become due on account of the Loan or any Additional Loan or otherwise, or to enforce performance and observance of any obligation, agreement, covenant, representation or warranty of the Company under this Agreement, or any related instrument; or to otherwise compensate the Port Authority, the Bank Trustee or Bondholders for any damages on account of such Event of Default; provided, however, that with respect to any series of Bonds which are, at the relevant time, secured by a Letter of Credit which remains outstanding and as to which there exists no default by the Bank thereunder, neither the Trustee nor the Port Authority shall exercise the remedies authorized by this Subsection 5.2(1) except upon the prior written direction of the Bank, in which case the Trustee shall be obligated to exercise its remedies as provided herein, or with the prior written consent of the Bank; but provided further, that if and to the extent the Trustee Authority shall be precluded from exercising the remedies provided for herein by reason of the foregoing clause, the Bank shall be similarly precluded from exercising any remedies provided herein the benefit of the Bank;

(2) The Port Authority (without the prior written consent of the Trustee if the Trustee is not enforcing the Port Authority's rights a manner to protect the Port Authority or is otherwise taking action that brings adverse consequences to the Port Authority) may take whatever action at law or in equity may appear necessary or appropriate to enforce its rights of indemnification under Section 5.17 of the Master Loan Agreement and to collect all sums for fees and expenses then due and thereafter to become due to the Port Authority under Sections 3.5, 5.17 and 9.5 of the Master Loan Agreement;

(3) The City may take whatever action at law or in equity may appear necessary or appropriate to collect all sums then due and thereafter to become due on account of the City Loan.

#### Section 5.3. Disposition of Funds.

Any amounts collected pursuant to action taken under Section 5.2 (other than sums collected for the Port Authority on account of its rights to indemnification and certain direct payments to be made to the Port Authority under Sections 3.5, 5.16 and 9.5 of the Master Loan Agreement) shall be applied in accordance with the provisions of the Master Indenture, Mortgage and City Mortgage. All other amounts shall be paid directly to the Port Authority.

#### Section 5.4. Nonexclusive Remedies.

No remedy herein conferred upon or reserved to the Port Authority, Bank, City or Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bank, Authority (or the Trustee) to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or be required by law.

#### Section 5.5. Attorneys' Fees and Expenses.

If an Event of Default shall exist under this Agreement and the City, Bank, Authority or the Trustee should employ attorneys or incur other expenses for the collection of any amounts due hereunder, or the enforcement of performance of any obligation or agreement on the part of the Company, the Company will upon demand pay to the City, Bank, Authority or the Trustee the reasonable fees of such attorneys and such other expenses so incurred.

Section 5.6. Effect of Waiver.

In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 5.7. Waiver of Stay or Extension.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any appraisal; valuation, stay, or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Agreement and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the City, Bank, Authority or the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 5.8. Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or the property of the Company, Bank, the City, the Trustee or the Port Authority (with the prior consent of the Trustee) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(1) to file and prove a claim and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Bank, City or the Port Authority and the Trustee (for themselves and on behalf of Bondholders) (including any claim for the reasonable compensation, expenses disbursements and advances of the City, the Bank, Authority and Trustee, their agents and counsel) allowed in such judicial proceeding, and

(2) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same.

Section 5.9. Restoration of Positions.

If the City, the Bank, Authority or the Trustee have instituted any proceeding to enforce any right or remedy under this Agreement, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the City, the Bank, Authority or the Trustee, then and in every such case the Company and the City, the Bank, Authority shall, subject to any determination in the proceeding, be restored to the positions they held prior to commencement of such proceedings, and thereafter all rights and remedies of the City, Bank, Authority shall continue as though no such proceeding had been instituted.

Section 5.10. Suits to Protect the Project.

The Authority shall have power to institute and to maintain such proceedings as it may deem expedient to prevent any impairment of the Project or any portion thereof, by any acts which may be unlawful or in violation of this Agreement, and such suits and proceedings as the Port Authority may deem expedient to protect its interests in the Project or any portion thereof, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of, or compliance with, such enactment, rule or order would impair, adversely affect the Project or be prejudicial to the interests of the Bondholders.

Section 5.11. Performance of the Company's Obligations by the City, the Bank, the Port Authority or Trustee.

In the event the Company at any time neglects, refuses or fails to perform any of its obligations under this Agreement, the City, Bank, the Port Authority or the Trustee, at their respective options and following at least 30 days written notice to Company (where a period of notice is necessary to avoid a default on the Bonds or to avoid endangering the interest of the City, Bank, the Port Authority, the Trustee or the Bondholders, or to prevent any loss or forfeiture thereof), may perform or cause to be performed such obligations, and all expenditures incurred by the City, Bank, the Port Authority or the Trustee thereby shall be promptly paid or reimbursed by the Company to the City, Bank, the Port Authority or the Trustee, as the case may be, together with interest thereon at then publicly announced prime rate of the Bank to most creditworthy customers on a short-term basis.

Section 5.12. Performance by Third Parties.

The Authority may permit third parties to perform any and all acts or take such action as may be necessary for and on behalf of the Company to prevent or correct any Event of Default hereunder. The acceptance by the Port Authority or the Trustee of any such performance by third parties shall not in any way diminish or absolve the Company of primary liability hereunder.

Section 5.13. Exercise of the Port Authority's or Bank's Remedies by Trustee.

Whenever any Event of Default shall have occurred and be subsisting the Trustee may, but except as otherwise provided in the Master Indenture, Loan Agreement or Mortgage shall not be obliged to, exercise any or all of the rights of the Port Authority or Bank under this Article 9, without notice to the Port Authority and Bank.

ARTICLE 6

GENERAL

Section 6.1. Notices.

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, with proper address as indicated below. The Authority, the Company, the Trustee and the Bank may, by written notice given by each of them to the others, designate any address or addresses to which notices, certificates or other communications to them shall be sent when required as contemplated by this Agreement. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

To the Port Authority: Port Authority of the City of Saint Paul  
1900 Landmark Towers  
345 St. Peter Street  
Saint Paul, Minnesota 55102  
Attn: Executive Director

To the Company: District Energy St. Paul, Inc.  
Hans O. Nyman Energy Center  
76 Kellogg Boulevard West  
Saint Paul, Minnesota 55102  
Attn: President

To the Trustee: U.S. Bank National Association  
60 Livingston Avenue  
3rd Floor  
EP-MN-WS3C  
St. Paul, MN 55107-2292  
Attention: Corporate Trust Department

To the City: City of St. Paul  
Department of Planning and Economic Development  
25 West Fourth Street  
Saint Paul, Minnesota 55102  
Attn: Development Division

Section 6.2 Binding Effect.

This Agreement shall inure to the benefit of and shall be binding upon the Bank, the Trustee, the Port Authority and the Company and their respective successors and assigns.

Section 6.3. Severability.

In the event any provisions of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 6.4. Amendments, Changes, and Modifications.

(1) Except as otherwise provided in this Agreement or in the Master Indenture, subsequent to the issuance of the Bonds and before the lien of the Master Indenture is satisfied and discharged in accordance with its terms, this Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee and the Port Authority.

(2) Notwithstanding any other term, provision or agreement contained herein, during the term of Urban Development Action Grant No. B-81-AA-27-0028, this Agreement shall not be amended in any material respect without the prior written approval of the Secretary of the United States Department of Housing and Urban Development. For the purposes of this subsection, "material" shall mean anything which cancels or reduces any developmental, construction, job creating or financial obligation of any party hereto by more than ten percent (10%), changes the cities or character of any development activity or increases any time for performance by any party hereto by more than thirty (30) days.

Section 6.5. Execution Counterparts.

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6.6. Required Approvals.

Consents and approvals required by this Agreement to be obtained from the Company, the City, the Port Authority or the Trustee shall be in writing and shall not be unreasonably withheld or delayed.

Section 6.7. Limitation on Municipality Liability.

No agreements or provisions contained in this Agreement nor any agreement, covenant or undertaking by the Port Authority, the City or the HRA contained in any document executed by the Port Authority, the City or the HRA in connection with any Project shall give rise to any pecuniary liability of the Port Authority, the City or the HRA or a charge against its or their general credit or

taxing powers, or shall obligate the Port Authority, the City or the HRA financially in any way except with respect to the System and the application or revenues therefrom and the proceeds of the Bonds. No failure of the Port Authority, the City or the HRA to comply with any term, condition, covenant or agreement herein shall subject the Port Authority, the City or the HRA to liability for any claim for damages, costs or other financial or pecuniary charge except to the extent that the same can be paid or recovered from the System or revenues therefrom or proceeds of the Bonds; and no execution of any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or taxing powers of the Port Authority, the City or the HRA. Nothing herein shall preclude a proper party in interest from seeking and obtaining specific performance against the Port Authority, the City or the HRA for any failure to comply with any term, condition, covenant or agreement herein; provided, that no costs, expenses or other monetary relief shall be recoverable from the Port Authority, the City or the HRA except as may be payable from the System or its revenues.

Section 6.8. Superseding Effect.

It is intended and agreed that this Agreement amend and restate, and replace in its entirety, the Original Disbursing Agreement, with respect to all Bonds, and by their execution of this Agreement, the parties hereto consent to such amendment, restatement and replacement.



THE HOUSING AND REDEVELOPMENT  
AUTHORITY OF THE CITY OF  
SAINT PAUL, MINNESOTA

(SEAL)

By: \_\_\_\_\_  
Chairman

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Executive Director

By: \_\_\_\_\_  
Director, Department of Finance  
And Management Services

Approved as to form:

By: \_\_\_\_\_  
Assistant City Attorney

(Disbursing Agreement dated as of June 1, 2012 between the HRA, the City, the Port Authority, the Trustee,  
and the Company)

CITY OF SAINT PAUL, MINNESOTA

By: \_\_\_\_\_

Its Mayor

[SEAL]

By: \_\_\_\_\_

Its Director, Department of  
Planning and Economic Development

By: \_\_\_\_\_

Its Director, Department of  
Finance and Management Services

Approved as to form:

By: \_\_\_\_\_

Assistant City Attorney

(Disbursing Agreement dated as of June 1, 2012 between the HRA, the City, the Port Authority,  
the Trustee, and the Company)

THE PORT AUTHORITY OF THE CITY  
OF SAINT PAUL

By \_\_\_\_\_  
Its President

DISTRICT ENERGY ST. PAUL, INC.

By \_\_\_\_\_  
Its President

By: \_\_\_\_\_  
Its Treasurer

(Disbursing Agreement dated as of June 1, 2012 between the HRA, the City, the Port Authority, the Trustee, and the Company)

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By \_\_\_\_\_

Its \_\_\_\_\_

[SEAL]

By \_\_\_\_\_

Its \_\_\_\_\_

(Disbursing Agreement dated as of June 1, 2012 between the HRA, the City, the Port Authority, the Trustee, and the Company)

EXHIBIT A

CONSTRUCTION CONTRACTS

The Construction Contracts are held by the Company as provided by Section 1.3.

EXHIBIT B

PLANS AND SPECIFICATIONS

The Plans and Specifications are held by the Company as provided by Section 1.3.