



Board Packet for the  
April 18, 2023  
District Energy Corporation  
Board Meeting

TAB I



**NOTICE OF QUARTERLY MEETING AND AGENDA  
DISTRICT ENERGY CORPORATION  
BOARD OF DIRECTORS**

***Lincoln Electric System Operations Center (LOC)  
9445 Rokeby Road / Lincoln, NE  
April 18, 2023 / 12:00 pm***

*Notice of meeting was published in the Lincoln Journal Star newspaper on April 11, 2023.*

- I. CALL TO ORDER AND OPEN MEETING ADVISEMENT – Sean Flowerday (12:00)**
- II. SAFETY BRIEFING – Jason Fortik (12:02)**
- III. APPROVAL OF JANUARY 24, 2023 MEETING MINUTES\* – Sean Flowerday (12:05)      Motion**
- IV. MANAGEMENT REPORT – Nick Wischhof (12:10)**
- A. Fuels & Operations Update
  - B. Update of Construction Projects
  - C. New Customer Feasibility Studies
- V. FINANCIAL REPORT – Emily Koenig (12:25)**
- A. Current Financial Statement
  - B. Consider Accepting the 2022 Audit Report\*      Motion
  - C. Tax-Exempt Financing Compliance Update
  - D. Consider Authorizing the Execution of Modification of a Line of Credit\*      Resolution 23-01
- VI. MISCELLANEOUS/BUSINESS/ASSIGNMENTS (12:40)**
- A. Legislative Session Update – David Levy
  - B. Consider authorizing Board Member and staff attendance at the International District Energy Association’s Annual Conference in Chicago, IL, June 5-8, 2023\* – Jason Fortik
  - C. Recognition for Tammy Ward’s board service\* – Sean Flowerday      Motion  
Resolution 23-02
- VII. FUTURE MEETING DATES AND DISCUSSION (12:55)**
- July 18, 2023  
October 17, 2023  
January 23, 2024

**VIII. ADJOURNMENT (1:00)**

\*Denotes Action Item

The meeting will start at 12:00 pm. However, the times listed next to each item are tentative and subject to change dependent on the pace of the meeting. The Board may take up items before the estimated time.

TAB II



## MINUTES OF DISTRICT ENERGY CORPORATION BOARD

Minutes of the meeting of the District Energy Corporation (DEC), January 24, 2023, held at the Lincoln Electric System Operations Center, 9445 Rokeby Road, Lincoln, Nebraska. Notice of the meeting was published in the Lincoln Journal Star newspaper on January 17, 2023.

Board Members Present: Tammy Ward, Sean Flowerday, Kim Morrow, Rick Vest, Carl Eskridge

Board Members Absent: None

Others Present: David Levy, Emily Koenig, Jason Fortik, Nick Wischhof, Larry Balm, Dianne Dobrusky, Kerin Peterson, Kurt Kolm, Bryan Willnerd, Lisa Hale

Vice Chair Tammy Ward called the meeting to order at 11:40 a.m. and noted that a quorum was present. Ward stated that DEC conducts its meetings in compliance with the Nebraska Open Meetings Act and that a copy of the Act is located with the Assistant Secretary and on the back wall of the meeting room. **Call to Order**

Jason Fortik, LES Vice President of Power Supply and DEC Administrator, presented the Safety Briefing. **Safety Briefing**

Vice Chair Ward asked for approval of the October 24, 2022 meeting minutes. Flowerday made the motion and Eskridge seconded. The vote to approve the minutes was:  
Aye: Ward, Flowerday, Morrow, Eskridge  
Nay: None  
Abstain: Vest **Approval of Prior Minutes**

Jason Fortik brought forth the re-appointment notice for Tammy Ward, noting that she was reappointed for a term that would end 12/31/2024. Also noted was Rick Vest's appointment to a County Commissioners' seat that would also end 12/31/2024. Carl Eskridge was appointed to the LES seat for a term that would end 12/31/2024. And Kim Morrow was appointed to fill the City seat that was formerly held by Miki Esposito, that term ends 12/31/2023. Fortik also introduced Nick Wischhof, the new LES Manager of Projects Engineering and DEC Project Manager, and Bryan Willnerd in LES Financial Services. **Appointment / Re-Appointment Notices**

David Levy, Legal Counsel, conducted the election of Chair for 2023. Eskridge moved to nominate Sean Flowerday as Chair. Ward seconded the motion. The vote to approve Sean Flowerday as Chair was:

Aye: Ward, Flowerday, Morrow, Vest, Eskridge

Nay: None

## **Election of Officers for 2023**

David Levy conducted the election of Vice Chair for 2023. Vest moved to nominate Carl Eskridge as Vice Chair. Flowerday seconded the motion. The vote to approve Carl Eskridge as Vice Chair was:

Aye: Ward, Flowerday, Morrow, Vest, Eskridge

Nay: None

David Levy conducted the election of Secretary for 2023. Eskridge moved to nominate Kim Morrow as Secretary. Vest seconded the motion. The vote to approve Kim Morrow as Secretary was:

Aye: Ward, Flowerday, Morrow, Vest, Eskridge

Nay: None

Nick Wischhof, LES Manager, Projects Engineering, presented.

## **Management Report**

Wischhof stated that there were no unplanned service interruptions, and then detailed several issues that are currently being evaluated. The budget summary and recent natural gas prices were reviewed.

- **Operations Update**

Wischhof presented the Capital Projects updates for 2022 and 2023, with details for each project. 2022 projects that carry forward include: central cyber security system and the SBP roof upgrade. Capital Projects for 2023 include: C/C water softener upgrade, C/C water service upgrade, CADF geothermal loop cooler, CADF backup circulating water pumps, WHM electric boiler addition, LOC geothermal loop heating system, NSP control room temperature conditioning, and NSP on-line chiller tube cleaning system.

- **Capital Projects Update**

Wischhof presented an outage report and detailed the metrics and data used to determine service interruptions. No unplanned service interruptions were identified in 2022.

- **Service Interruptions**

An update on new customer Feasibility Studies was presented. No expansion is planned at the State Boiler Plant. A decision on the 9<sup>th</sup> & P expansion project is expected from that developer in Q1 2023.

- **Feasibility Studies**

Emily Koenig, LES VP Financial Services and CFO and DEC CFO, **Financial Report** presented.

Year to date sales are slightly over budget, due primarily to colder than average temperatures. Year to date revenues are closely following budget. Year to date expenses are slightly over budget, primarily due to natural gas costs. Debt Service Coverage was slightly lower than budget due primarily to higher expenses. 2022 Capital spending was \$411k below budget, pending period 13 adjustments.

- **4th Quarter 2022**

Bryan Willnerd, LES Manager Treasury and Risk Management, presented. **Investment Report**

Willnerd presented the semiannual investment report, with details on DEC's \$8.8M portfolio that is managed by LES. The report showed yield increases throughout 2022, with those increases beginning to slow towards year end. DEC fund performance lagged compared to benchmark yields – but was not unexpected due to DEC's "hold to maturity" strategy.

- **4th Quarter 2022**

Investment objectives for safety, liquidity and return on investment were met. Portfolio allocation limits were not in compliance with the policy due to investments maturing on the last day of 2022 and a decision not to reinvest the funds on that same day due to the potential for year-end cross over issues if investments didn't settle properly. The criteria to receive 3 bids for each investment request was met.

Jason Fortik presented information about the International District Energy Association's (IDEA) 2023 annual conference. **IDEA conference**

This annual conference is scheduled for early June 2023 in Chicago. DEC typically budgets for two board members to attend, as well as one or two staff members.

David Levy presented information about proposed Nebraska legislation that may impact DEC. The following bills were discussed: LB 164 (McKinney), LB 299 (Linehan), LB 637 (Albrecht), LB 650 (McDonnell). **Nebraska Legislation**

Flowerday reminded everyone that the next meeting date is April 18th, 2023. Other meeting dates for 2023 are: July 18<sup>th</sup> and October 17<sup>th</sup>. **Future Meetings**

Fortik introduced discussion about the start time of future meetings and the provision of lunch. The noon hour meetings with lunch provided was agreeable to all.

Chair Flowerday asked for a motion to adjourn. Ward moved for approval. **Adjournment**

Eskridge seconded the motion. The vote to adjourn was:

Aye: Ward, Flowerday, Morrow, Vest, Eskridge

Nay: None

There being no further business to come before the Board, Chair Flowerday declared the meeting adjourned at approx. 12:45 p.m.

Sean Flowerday, Board Chair

By: \_\_\_\_\_  
Dianne Dobrusky, Assistant Secretary



# TAB III



## Vision

*“Striving for Energy Excellence”*

## Mission

*“Provide low-cost, reliable and efficient thermal energy services to enhance and enable economic development of the Lincoln community”*

# DEC ENERGY

## Management Report

Nick Wischhof, P.E., Manager, Projects Engineering

Board of Directors Meeting

April 18, 2023



# Fuels and Operations Update: April 2023



# Operations Update

## Service Interruptions

- ❑ Unplanned outage to Hyatt Hotel (WHM) in January due to heat exchanger air locked
- ❑ Unplanned/Planned outage(s) to K Street (CC) to repair hot water distribution leaks
- ❑ Planned outages to the Penitentiary (NSP) for customer steam/condensate leak repairs
- ❑ Planned chilled water outage/service variance at WHM on 4/5 to repair a condenser water valve



# Operations Update-Fuels

4

## Pre-purchased Gas Contracts

	3-Month (Dec, Jan, Feb)	12-Month (Mar-Feb)
Volume, mmBtu	62,100	187,400
NYMEX WACOG*, \$/mmBtu	\$4.67	\$5.59
NYMEX Max, \$/mmBtu	\$7.72	\$7.72
NYMEX Min, \$/mmBtu	\$3.62	\$3.62

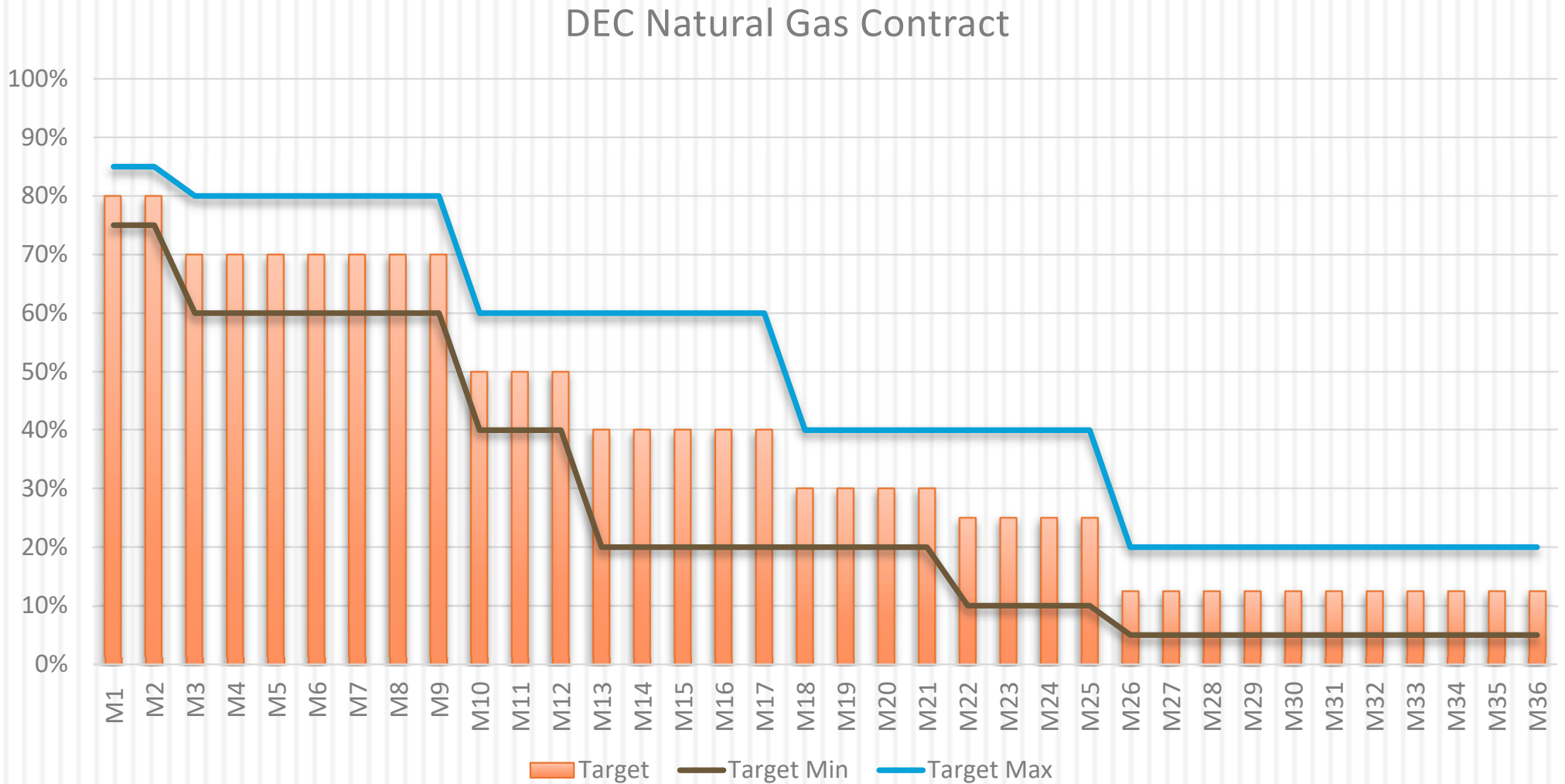
\*Weighted Average Cost of Gas based on NYMEX fund

- ❑ WACOG down \$0.35/mmBtu from previous 3-months
- ❑ Current NYMEX is ~\$2.011/mmBtu (4/7/2023)

## Near-Month Natural Gas Futures Prices (NYMEX) through April 06, 2023



# Natural Gas Contract





# State Boiler Plant Projects

# State Boiler Plant (SBP)







# SBP Roof Replacement

Project Scope / Description	Budget	Completion	Status
This project includes upgrading the building's roof originally installed in 1999 that is beginning to fail in places.	\$71.4k	2023 – Q2	Project has been completed.

Existing



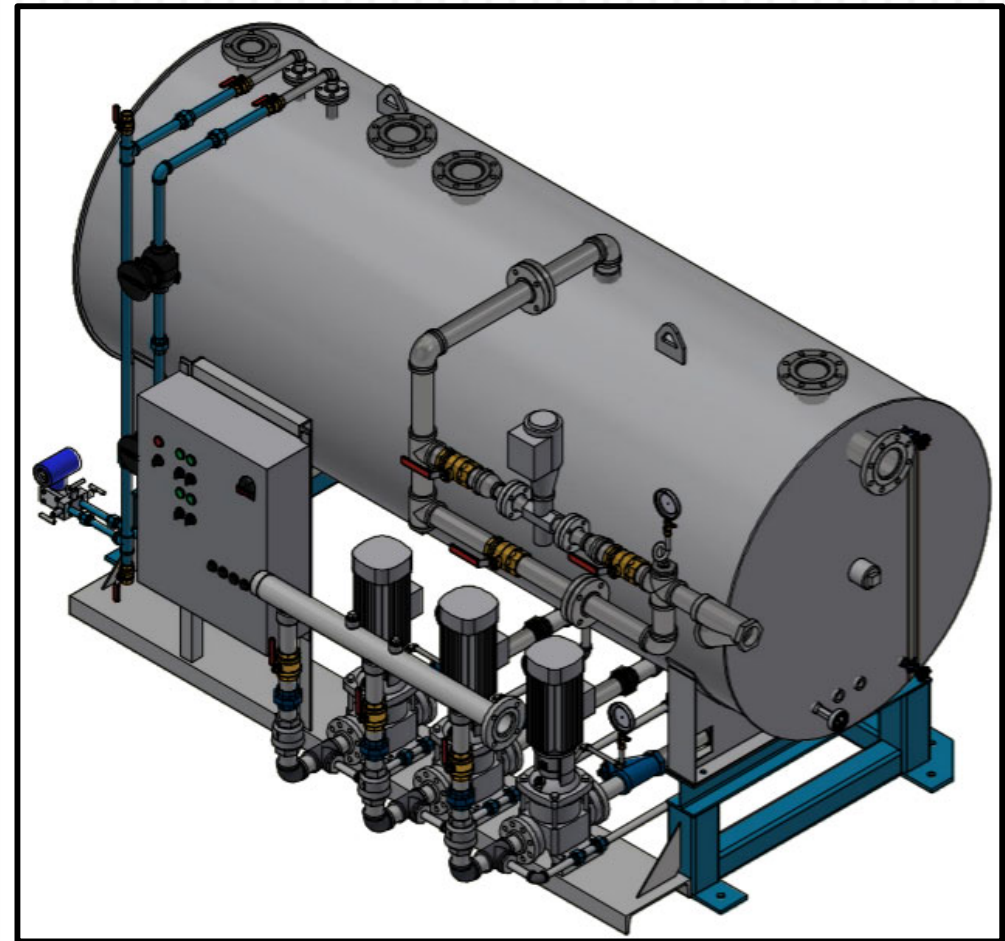
NEW





# SBP Condensate Surge Tank

Project Scope / Description	Budget	Completion	Status
This project will replace the surge tank and associated pumps, valves, and instrumentation.	\$200k	2023 – Q3 *Equipment lead times may delay project	Surge tank and controls have been ordered





# County/City Plant Hot Water Leak

# County-City Plant (CC)

Leak





# CC Hot Water Leak to K Street





DEC Repair



Temporary Repairs



Leak still present in pipe sleeve  
under K Street. No access to repair.





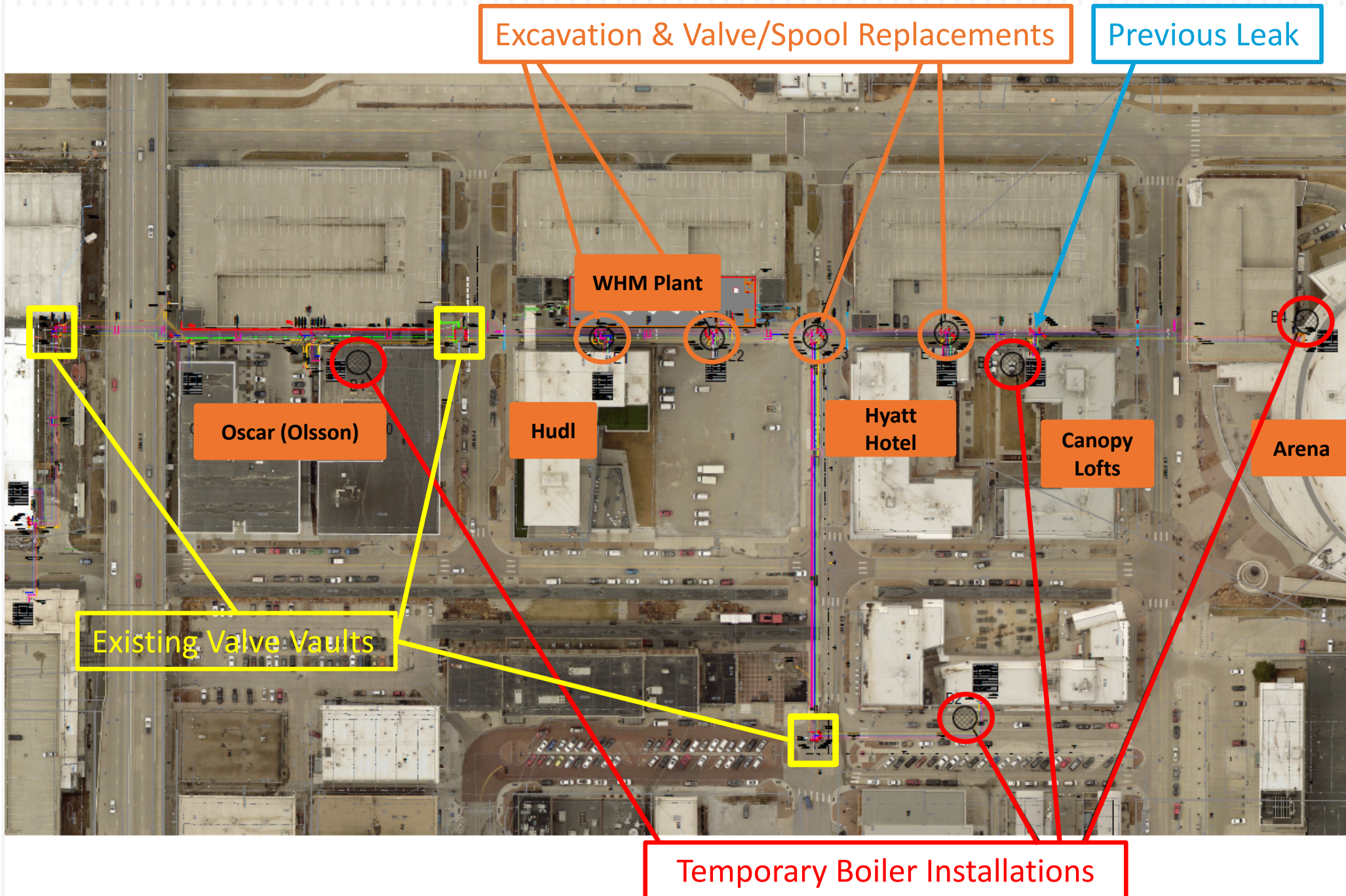
# West Haymarket Plant Valve Replacement Project

# West Haymarket (WHM)





# WHM Hot Water Distribution Valves





# WHM Valve Corrosion





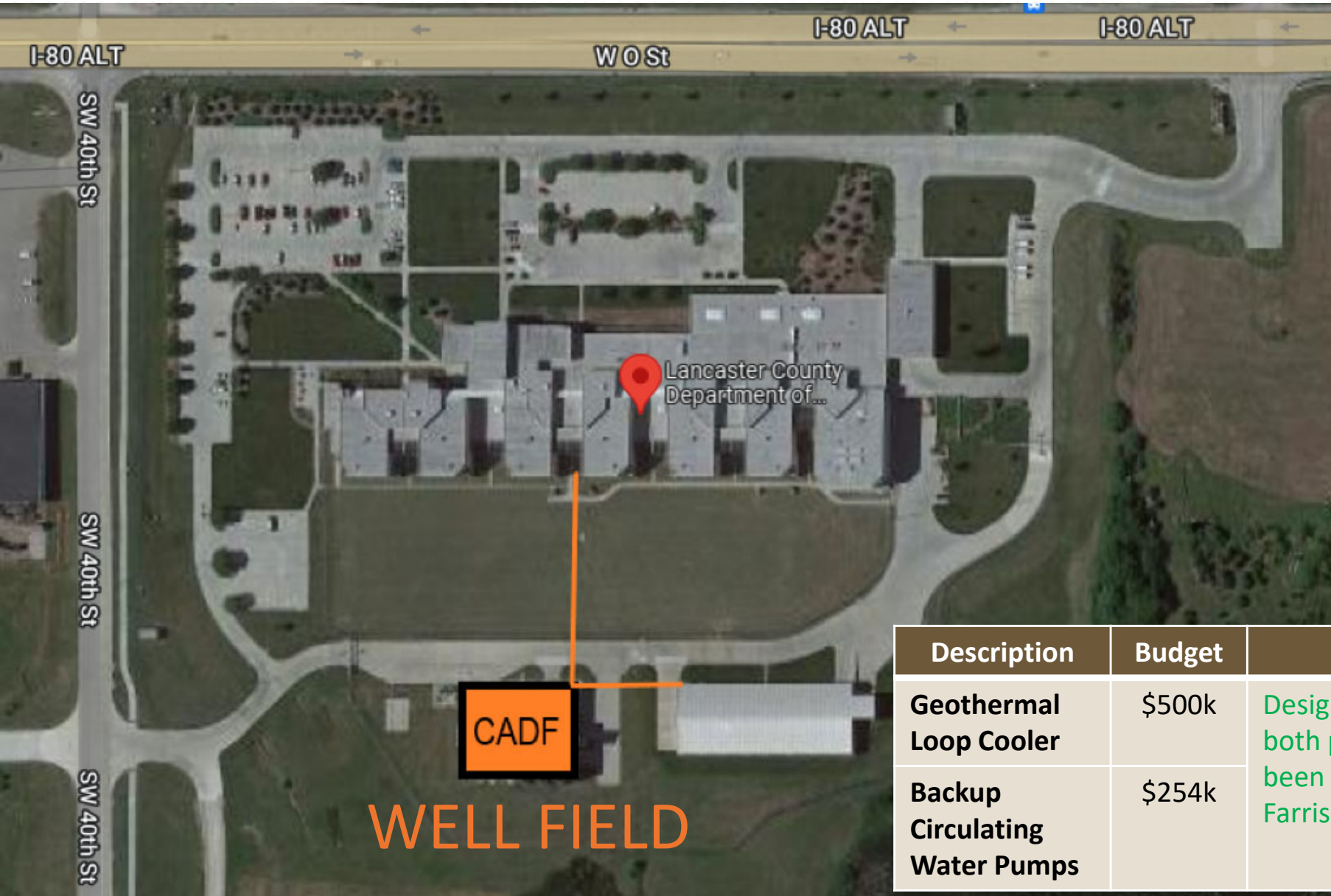


**DEC**  
ENERGY

# Other Construction Projects

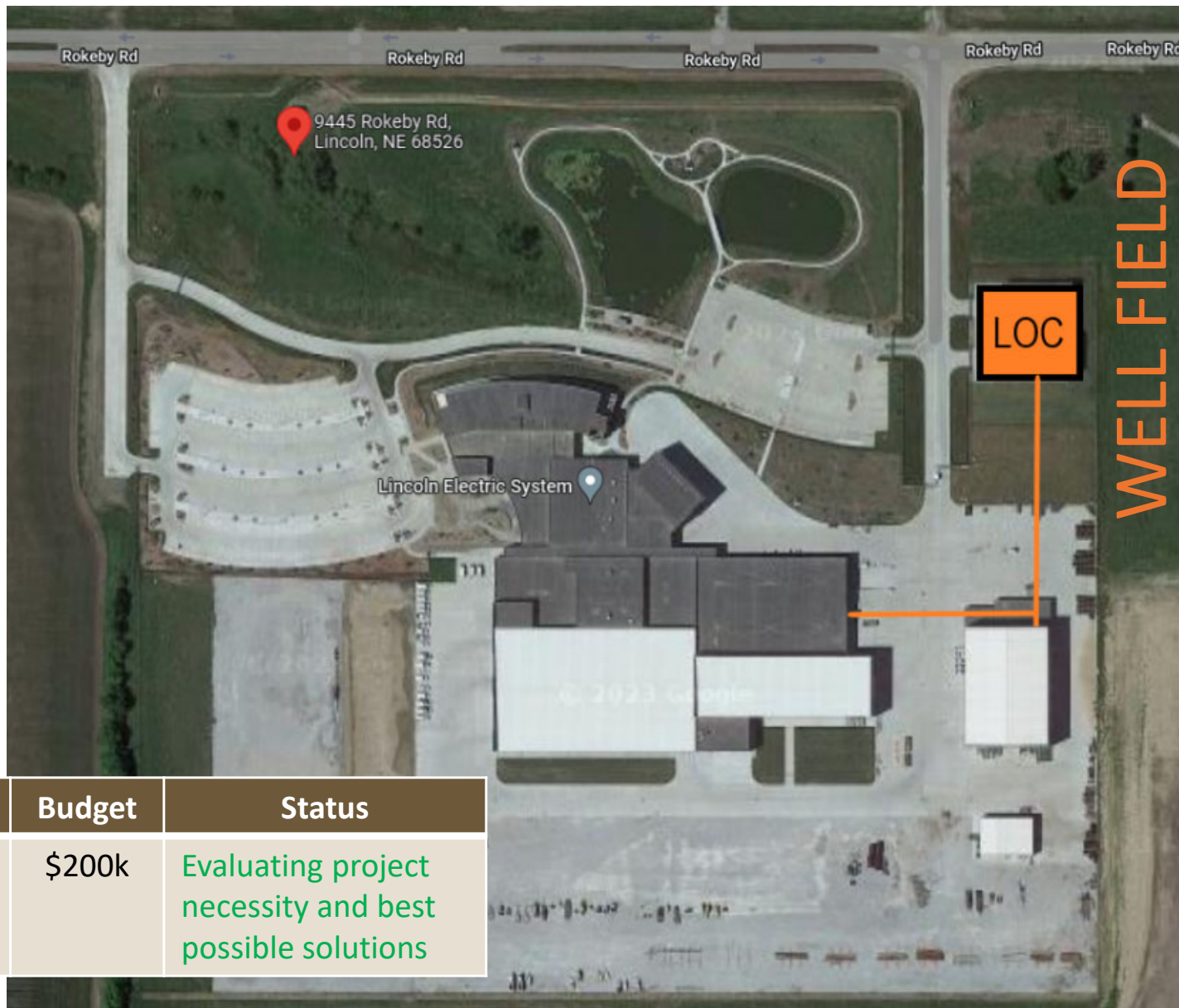
## April 2023

# County Adult Detention Facility (CADF)



Description	Budget	Status
Geothermal Loop Cooler	\$500k	Design services for both projects have been awarded to Farris Engineering
Backup Circulating Water Pumps	\$254k	

# LES Operations Center (LOC)

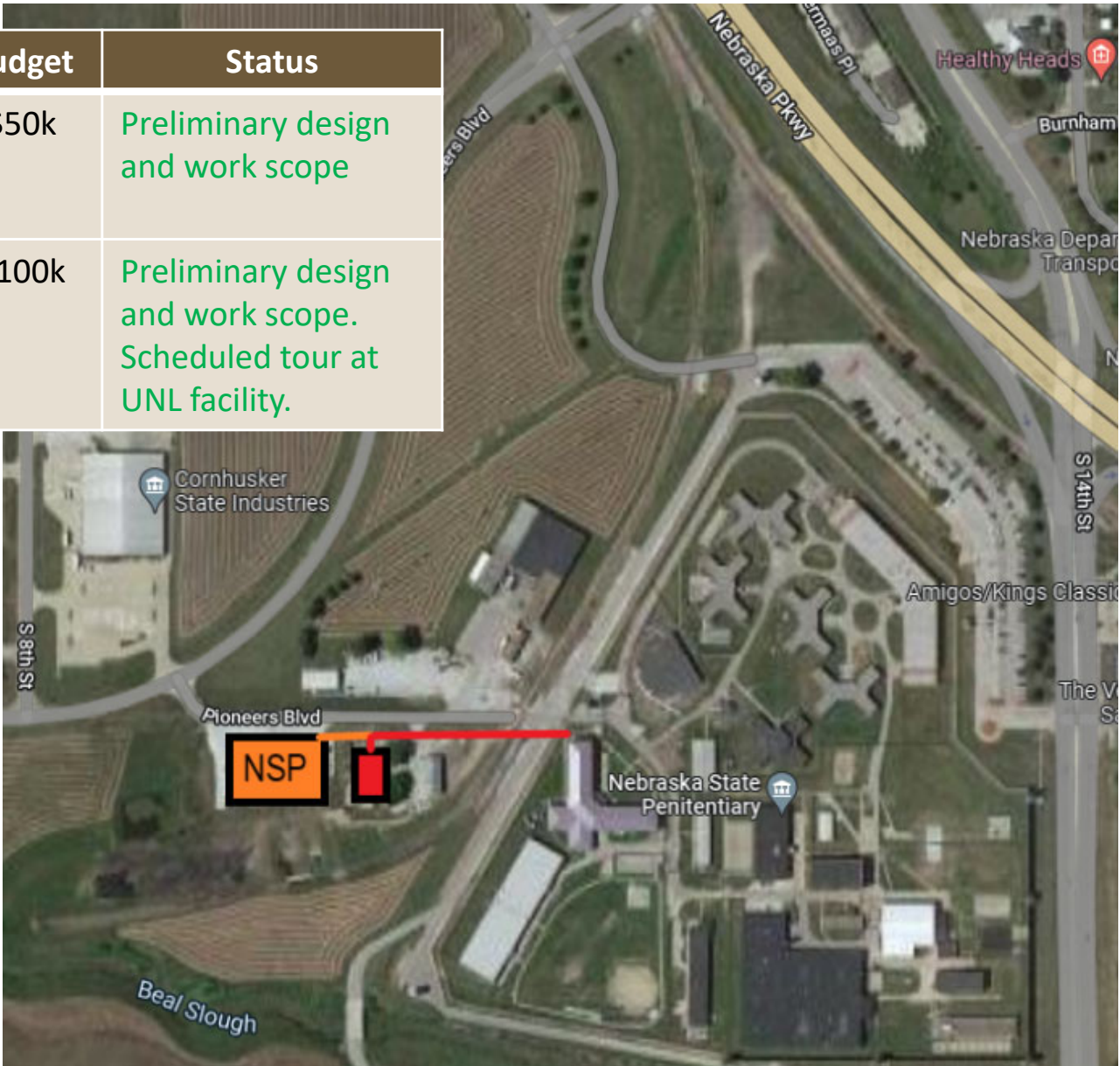


Description	Budget	Status
Geothermal Loop Heating System	\$200k	Evaluating project necessity and best possible solutions

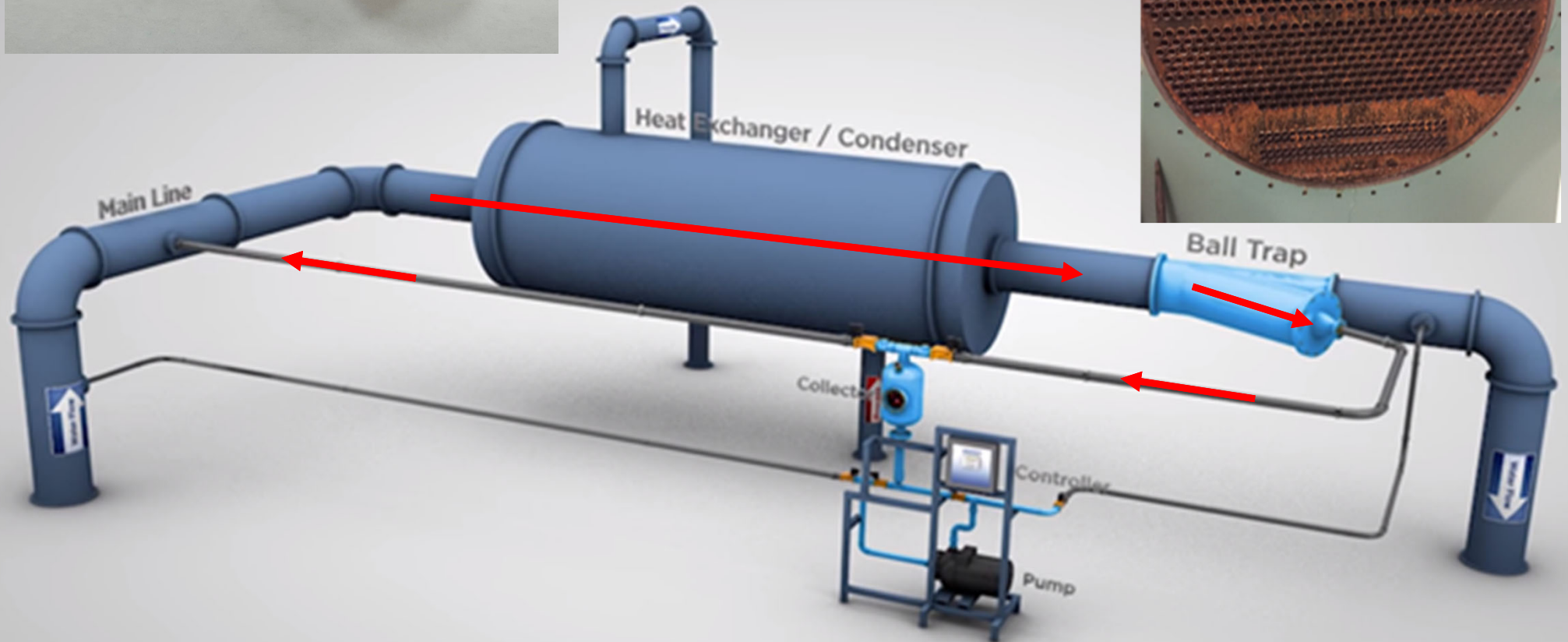


# Nebraska State Penitentiary (NSP)

Description	Budget	Status
Control Room Temperature Conditioning	\$50k	Preliminary design and work scope
On-Line Chiller Tube Cleaning System	\$100k	Preliminary design and work scope. Scheduled tour at UNL facility.



# Helios Tube Cleaning System





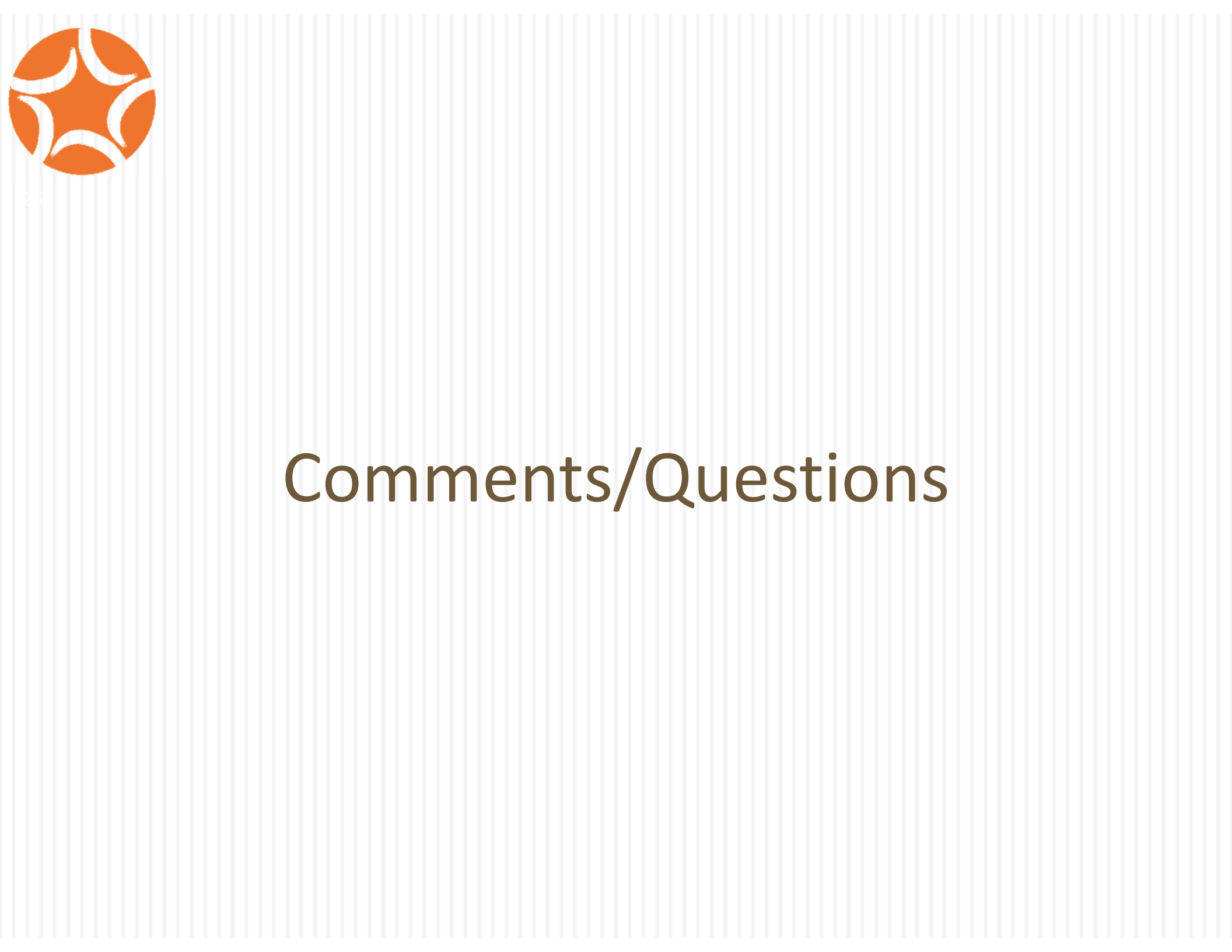
# New Customer Feasibility Studies / Discussions



# DEC Expansion

- ❑ 9<sup>th</sup> & P development does not plan to connect to DEC
  - ▣ Distribution piping costs & street closure concerns
- ❑ Block 5 (WHM) expansion discussions
  - ▣ May not connect to DEC
- ❑ HUDL II (WHM) expansion
  - ▣ Construction timeline has been extended to 2028
- ❑ K Street Redevelopment (CC)
  - ▣ Telesis expansion discussions with DEC





26

# Comments/Questions

# TAB IV



#### Vision

*“Striving for Energy  
Excellence”*

#### Mission

*“Provide low-cost,  
reliable and efficient  
thermal energy  
services to enhance  
and enable economic  
development of the  
Lincoln community”*

# Financial Report

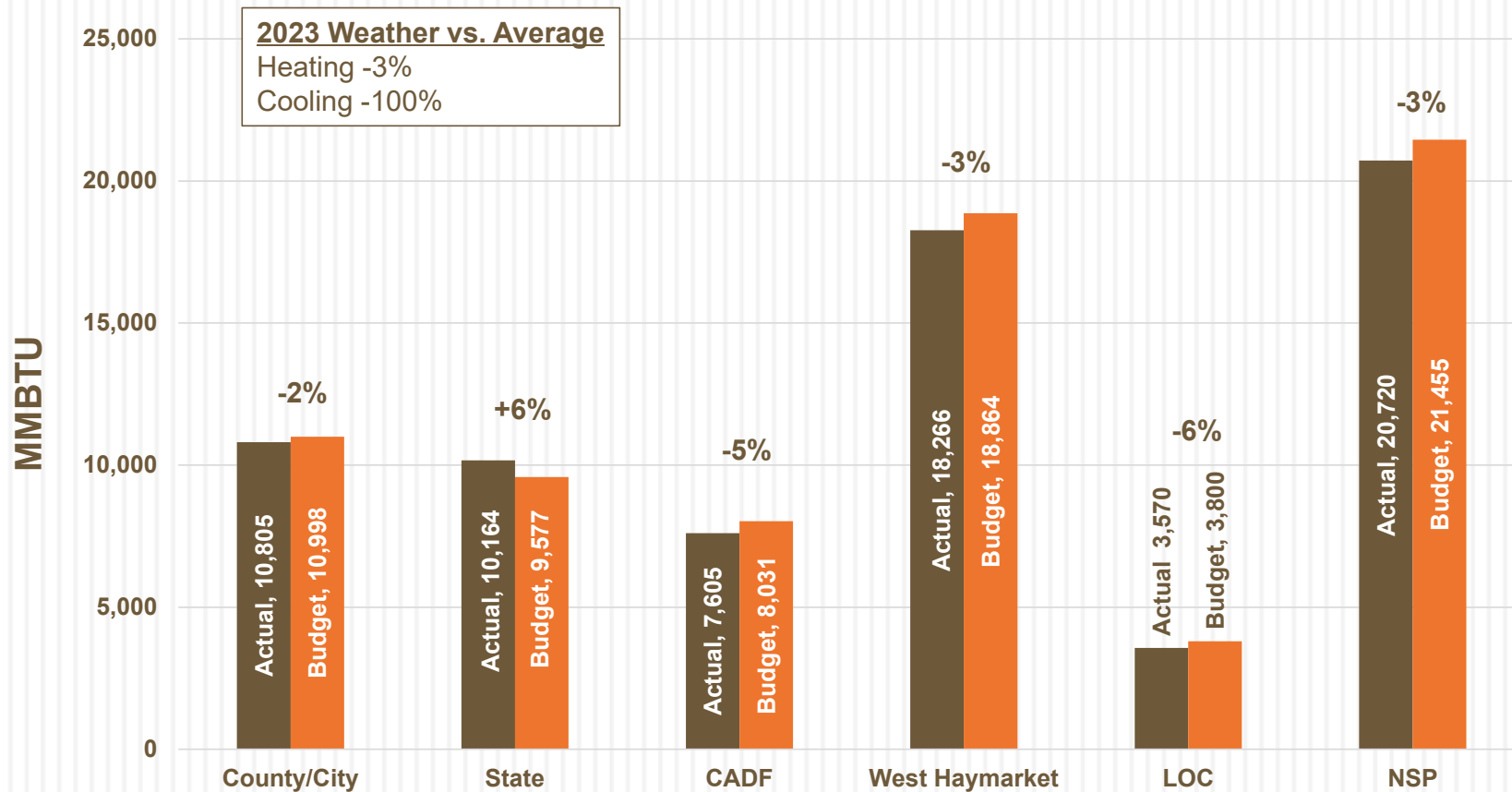
## 1<sup>st</sup> Quarter 2023

Board of Directors Meeting  
April 18, 2023

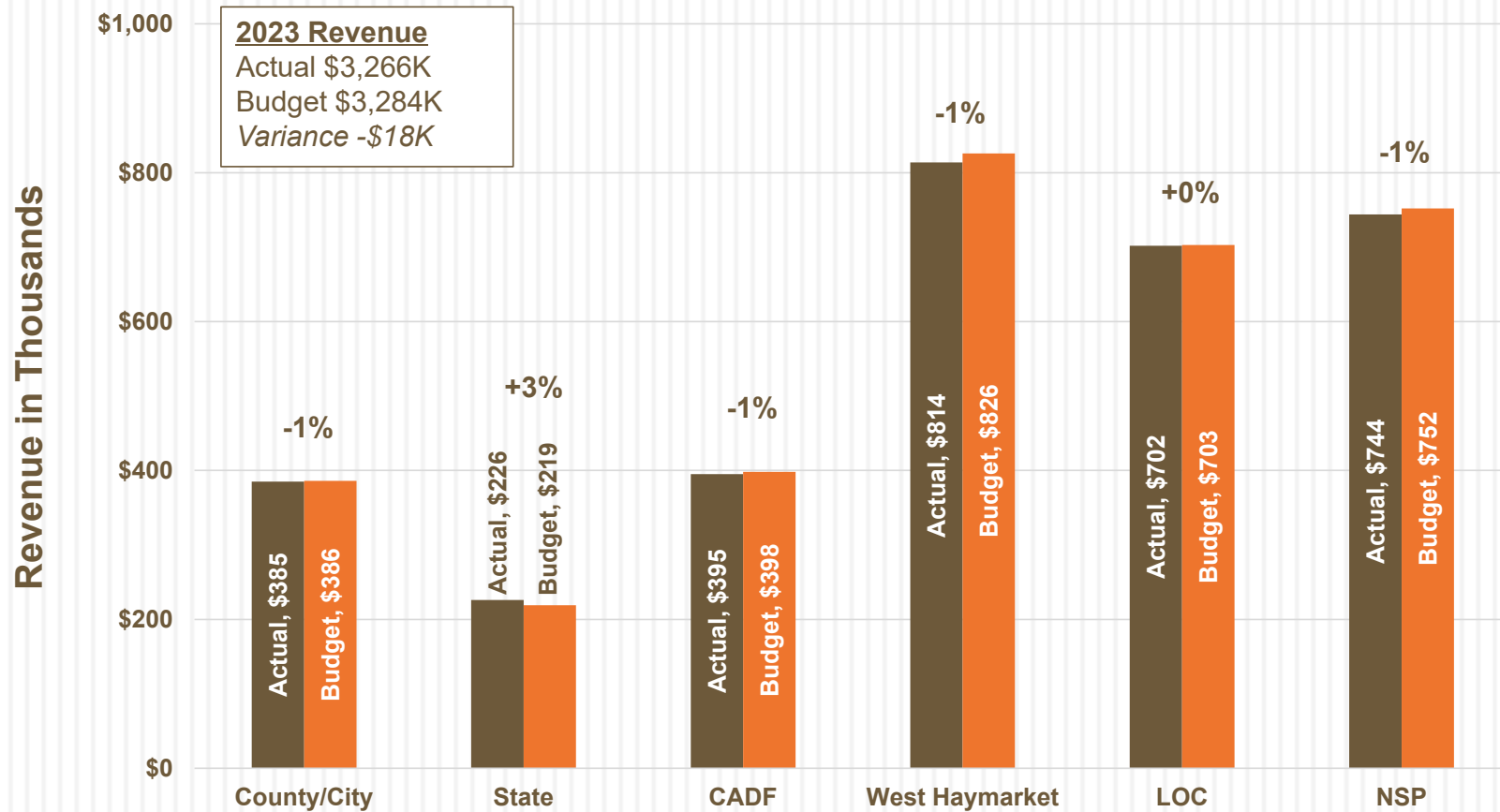
*Lower expenses result in favorable financial metrics.*

Emily N. Koenig  
LES Vice President & CFO; DEC CFO

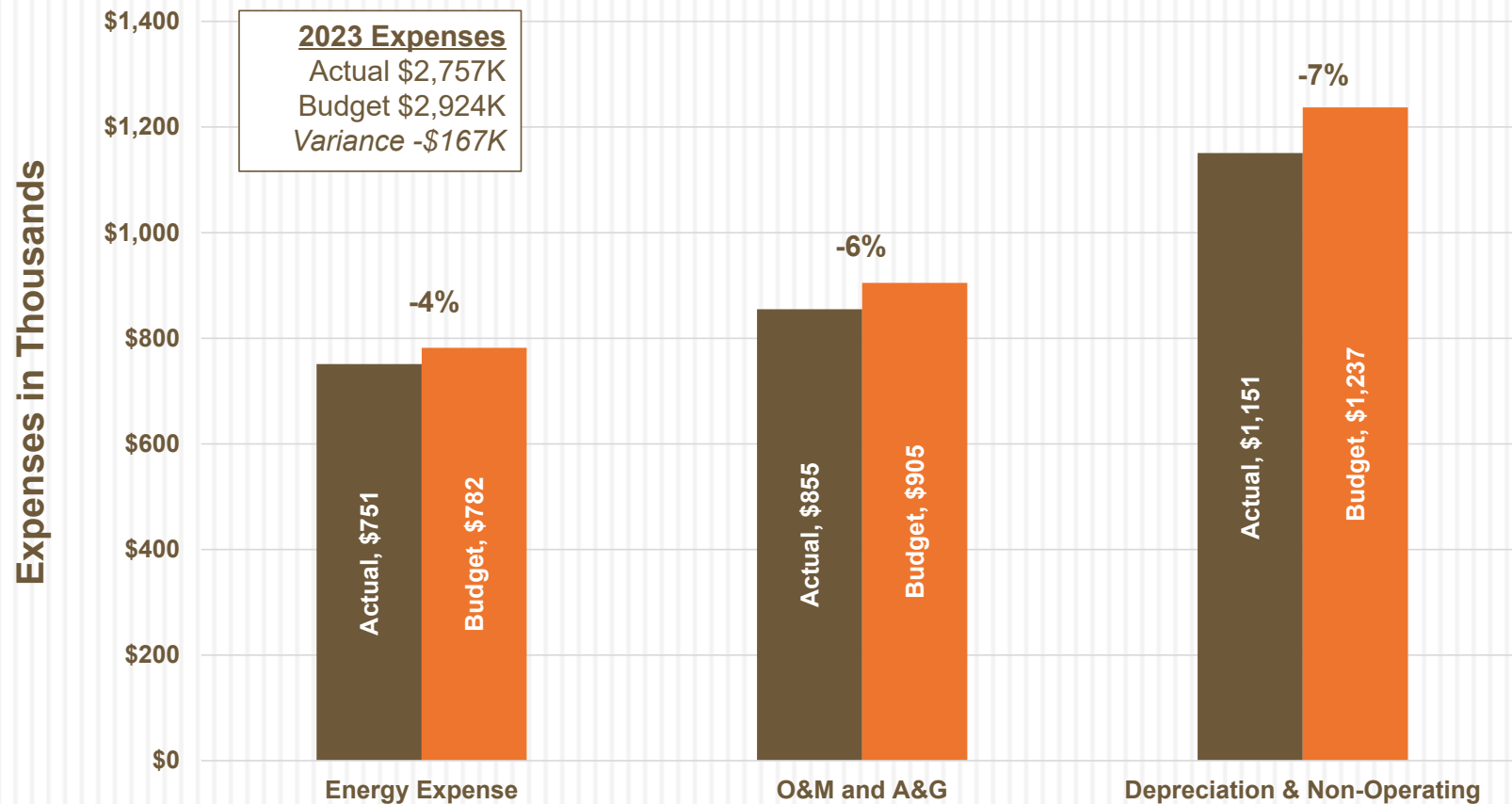
Sales were 2% below budget due primarily to warmer than average winter weather



## Revenue was near budget, with a slight underrun due to lower heating sales

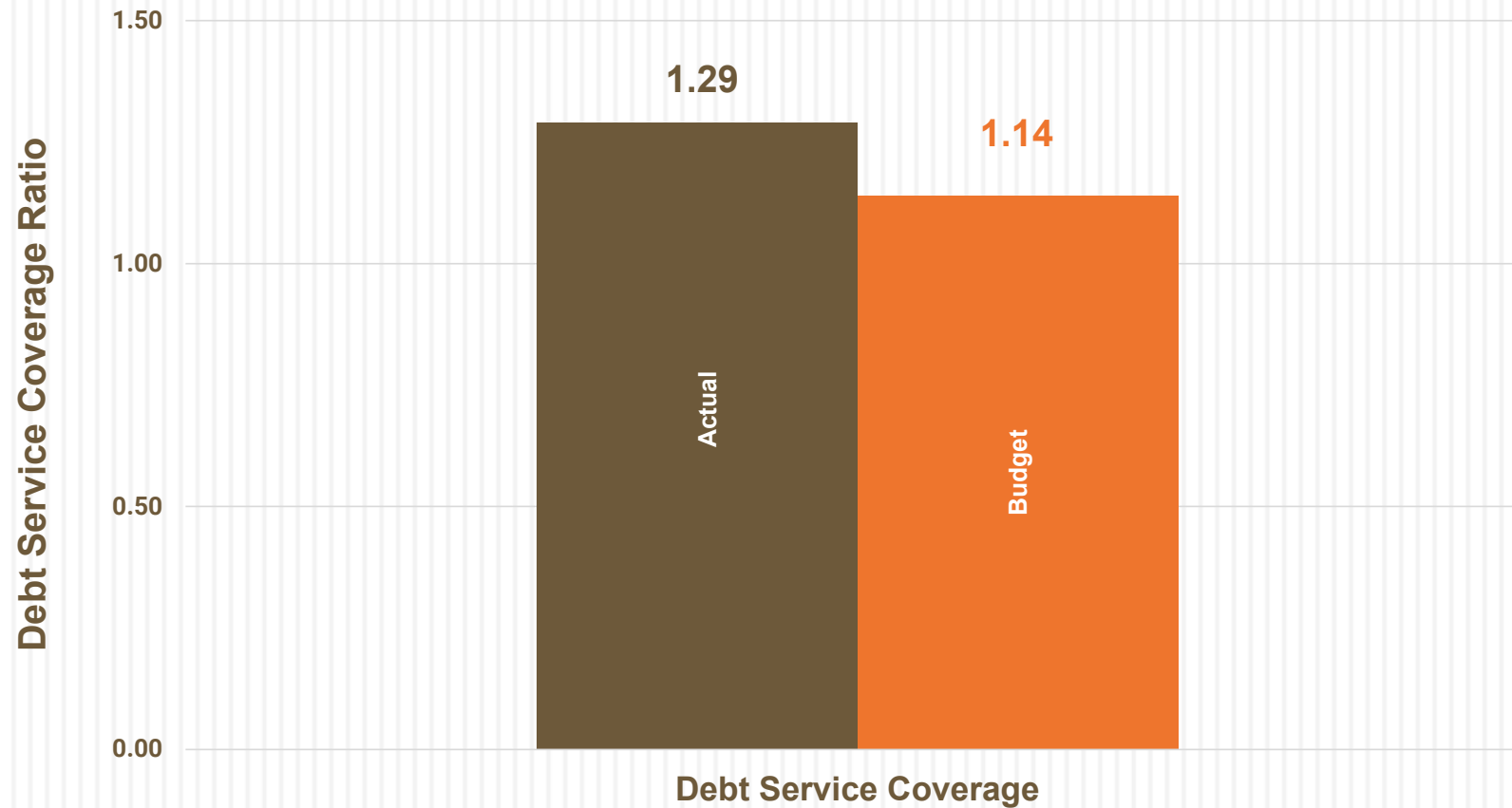


Expenses were 6% under budget, primarily due to higher interest income & lower energy and administrative costs



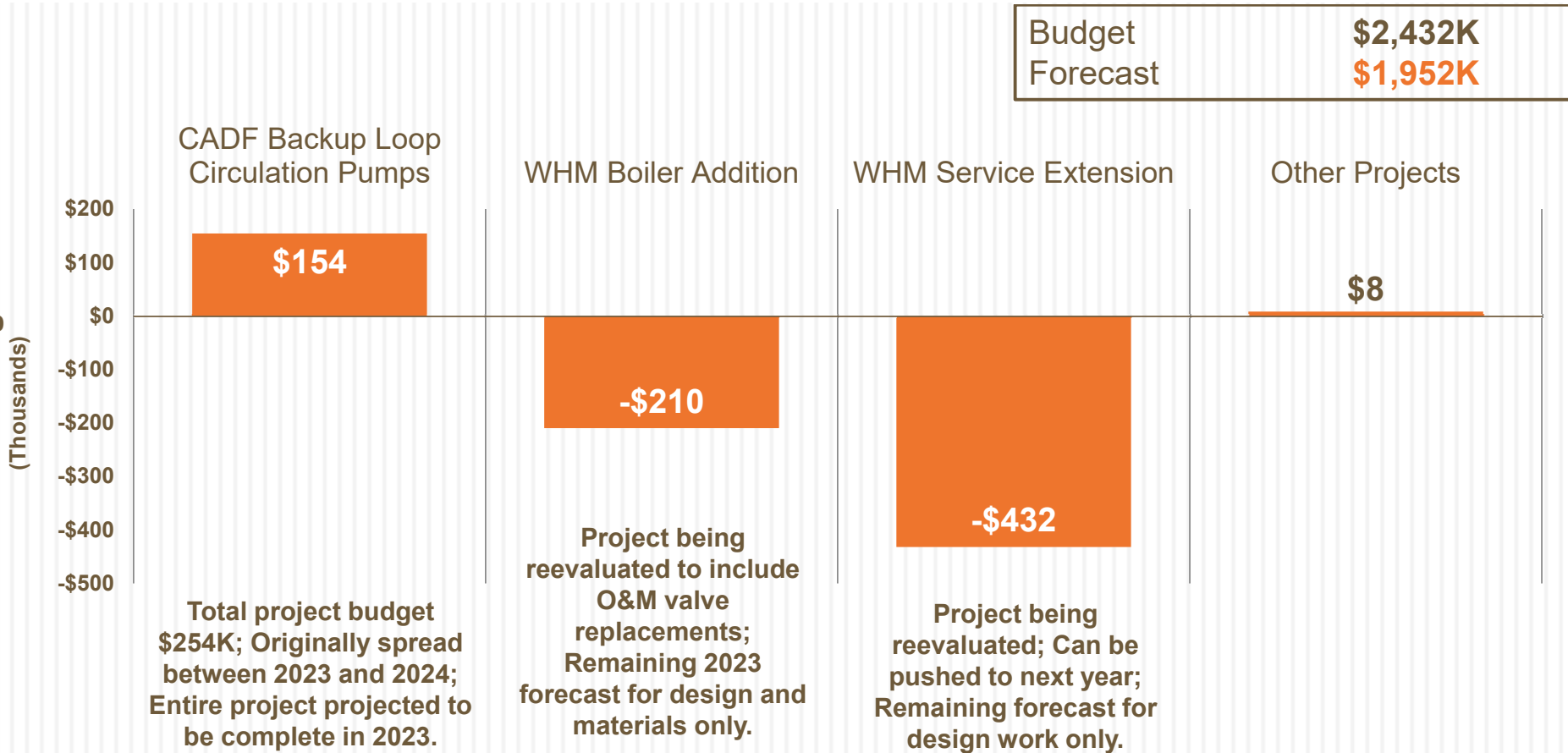


## Debt Service Coverage was greater than budget due to lower expenses



## Early projections indicate reduced capital spend in 2023 due to project delays

### 2023 Forecasted Budget Variance





# 2022 Audit Report

# Tax-Exempt Financing Compliance Update

## Resolution 23-01

Modifying Line of Credit Agreement with J.P. Morgan to replace LIBOR (*London Interbank Offered Rate*) benchmark with SOFR (*Secured Overnight Financing Rate*).

TAB V



# **Report to the Board of Directors and Management**

**District Energy Corporation**

**Results of the 2022 Financial Statement  
Audit, Including Required Communications**

**Lincoln, NE**

**December 31, 2022**

[forvis.com](https://forvis.com)



## Contents

**Required Communications Regarding Our Audit Strategy & Approach (AU-C 260) ..... 1**

    Overview & Responsibilities ..... 1

    Qualitative Aspects of Significant Accounting Policies & Practices ..... 3

    Adjustments Identified by Audit ..... 5

    Other Required Communications ..... 6

**Required Communications Regarding Internal Control (AU-C 265) ..... 7**

**Attachment ..... 8**



FORVIS is a trademark of FORVIS, LLP, registration of which is pending with the U.S. Patent and Trademark Office



# Required Communications Regarding Our Audit Strategy & Approach (AU-C 260)

The following matters are required communications we must make to you, including these responsibilities:

## Overview & Responsibilities

Matter	Discussion
<b>Scope of Our Audit</b>	<p>This report covers audit results related to your financial statements:</p> <ul style="list-style-type: none"><li>• As of and for the year ended December 31, 2022</li><li>• Conducted in accordance with our contract dated October 17, 2022</li></ul>
<b>Our Responsibilities</b>	<p>FORVIS is responsible for forming and expressing an opinion about whether the financial statements that have been prepared by management, with the oversight of those charged with governance, are prepared in accordance with accounting principles generally accepted in the United States of America (GAAP)</p>
<b>Audit Scope &amp; Inherent Limitations to Reasonable Assurance</b>	<p>An audit performed in accordance with auditing standards generally accepted in the United States of America (GAAS) is designed to obtain reasonable, rather than absolute, assurance about the financial statements. The scope of our audit tests was established in relation to the financial statements taken as a whole and did not include a detailed audit of all transactions.</p>

# FORV/S

FORVIS is a trademark of FORVIS, LLP, registration of which is pending with the U.S. Patent and Trademark Office

<b>Extent of Our Communication</b>	In addition to areas of interest and noting prior communications made during other phases of the engagement, this report includes communications required in accordance with GAAS that are relevant to the responsibilities of those charged with governance in overseeing the financial reporting process, including audit approach, results, and internal control. The standards do not require the auditor to design procedures for the purpose of identifying other matters to be communicated with those charged with governance.
<b>Independence</b>	The engagement team, others in our firm, as appropriate, and our firm, have complied with all relevant ethical requirements regarding independence.
<b>Your Responsibilities</b>	Our audit does not relieve management or those charged with governance of your responsibilities. Your responsibilities and ours are further referenced in our contract.
<b>Distribution Restriction</b>	<p>This communication is intended solely for the information and use of the following and is not intended to be, and should not be, used by anyone other than these specified parties:</p> <ul style="list-style-type: none"> <li>• The Board of Directors and Management</li> <li>• Others within the Entity</li> </ul>

**FORV/S**

FORVIS is a trademark of FORVIS, LLP, registration of which is pending with the U.S. Patent and Trademark Office



## Qualitative Aspects of Significant Accounting Policies & Practices

The following matters are detailed in the following pages and included in our assessment:

### Significant Accounting Policies

Significant accounting policies are described in Note 1 of the audited financial statements.

### Unusual Policies or Methods

With respect to significant unusual accounting policies or accounting methods used for significant unusual transactions (significant transactions outside the normal course of business or that otherwise appear to be unusual due to their timing, size, or nature), we noted the following:

- No matters are reportable

### Alternative Accounting Treatments

We had discussions with management regarding alternative accounting treatments within GAAP for policies and practices for material items, including recognition, measurement, and disclosure considerations related to the accounting for specific transactions as well as general accounting policies, as follows:

- Proper accounting treatment in accordance with the provisions of Governmental Accounting Standards Board (GASB) Codification Section Re 10, *Regulated Operations*

# FORV/S

FORVIS is a trademark of FORVIS, LLP, registration of which is pending with the U.S. Patent and Trademark Office



## **Management Judgments & Accounting Estimates**

Accounting estimates are an integral part of financial statement preparation by management, based on its judgments. Significant areas of such estimates for which we are prepared to discuss management's estimation process and our procedures for testing the reasonableness of those estimates include:

- Estimated useful lives of capital assets and depreciation methods

## **Financial Statement Disclosures**

The following areas involve particularly sensitive financial statement disclosures for which we are prepared to discuss the issues involved and related judgments made in formulating those disclosures:

- Financing receivables
- Related party transactions

## **Our Judgment About the Quality of DEC's Accounting Principles**

During the course of the audit, we made the following observations regarding DEC's application of accounting principles:

- No matters are reportable



FORVIS is a trademark of FORVIS, LLP, registration of which is pending with the U.S. Patent and Trademark Office



## Adjustments Identified by Audit

During the course of any audit, an auditor may propose adjustments to financial statement amounts. Management evaluates our proposals and records those adjustments that, in its judgment, are required to prevent the financial statements from being materially misstated.

A misstatement is a difference between the amount, classification, presentation, or disclosure of a reported financial statement item and that which is required for the item to be presented fairly in accordance with the applicable financial reporting framework.

## Proposed & Recorded Adjustments

Auditor-proposed and management-recorded entries include the following:

- No matters are reportable

## Uncorrected Misstatements

- No uncorrected misstatements

# FORV/S

FORVIS is a trademark of FORVIS, LLP, registration of which is pending with the U.S. Patent and Trademark Office



## Other Required Communications

### Other Material Communication

Listed below is another material communication between management and us related to the audit:

- Management representation letter (see Attachment)

**FORV/S**

FORVIS is a trademark of FORVIS, LLP, registration of which is pending with the U.S. Patent and Trademark Office

## Required Communications Regarding Internal Control (AU-C 265)

### ***Other Matter***

We also observed another matter and offer this comment and suggestion with respect to a matter which came to our attention during the course of the audit of the financial statements. Our audit procedures are designed primarily to enable us to form an opinion on the financial statements and, therefore, may not bring to light all weaknesses in policies and procedures that may exist.

However, this other matter is offered as a constructive suggestion for the consideration of management as part of the ongoing process of modifying and improving financial and administrative practices and procedures.

We can discuss this matter further at your convenience and may provide implementation assistance for changes or improvements.

- Governmental Accounting Standards Board Statement No. 96, *Subscription-Based Information Technology Arrangements* – effective for FY 2023



## Attachment

### Management Representation Letter

As a material communication with management, included herein is a copy of the representation letter provided by management at the conclusion of our engagement.

**FORV/S**

FORVIS is a trademark of FORVIS, LLP, registration of which is pending with the U.S. Patent and Trademark Office



*Representation of:*

District Energy Corporation  
9445 Rokeby Road  
Lincoln, Nebraska 68526

*Provided to:*

**FORVIS, LLP**

Certified Public Accountants  
1248 "O" Street, Suite 1040  
Lincoln, Nebraska 68508

The undersigned ("We") are providing this letter in connection with FORVIS' audits of our financial statements as of and for the years ended December 31, 2022 and 2021.

Our representations are current and effective as of the date of FORVIS' report: April 3, 2023.

Our engagement with FORVIS is based on our contract for services dated: October 17, 2022.

### **Our Responsibility & Consideration of Material Matters**

We confirm that we are responsible for the fair presentation of the financial statements subject to FORVIS' report in conformity with accounting principles generally accepted in the United States of America.

We are also responsible for adopting sound accounting policies; establishing and maintaining effective internal control over financial reporting, operations, and compliance; and preventing and detecting fraud.

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement. An omission or misstatement that is monetarily small in amount could be considered material as a result of qualitative factors.

### **Confirmation of Matters Specific to the Subject Matter of FORVIS' Report**

We confirm, to the best of our knowledge and belief, the following:

#### **Broad Matters**

1. We have fulfilled our responsibilities, as set out in the terms of our contract, for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America.
2. We acknowledge our responsibility for the design, implementation, and maintenance of:
  - a. Internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
  - b. Internal control to prevent and detect fraud.

District Energy Corporation  
Page 2

3. We have provided you with:
  - a. Access to all information of which we are aware that is relevant to the preparation and fair presentation of the financial statements, such as financial records and related data, documentation, and other matters.
  - b. Additional information that you have requested from us for the purpose of the audit.
  - c. Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence.
  - d. All minutes of governing body meetings held through the date of this letter or summaries of actions of recent meetings for which minutes have not yet been prepared. All unsigned copies of minutes provided to you are copies of our original minutes approved by the governing body, if applicable, and maintained as part of our records.
  - e. All significant contracts and grants.
4. We have responded fully and truthfully to all your inquiries.

**Misappropriation, Misstatements, & Fraud**

5. We have informed you of all current risks of a material amount that are not adequately prevented or detected by our procedures with respect to:
  - a. Misappropriation of assets.
  - b. Misrepresented or misstated assets, deferred outflows of resources, liabilities, deferred inflows of resources, or net position.
6. We have no knowledge of fraud or suspected fraud affecting the entity involving:
  - a. Management or employees who have significant roles in internal control over financial reporting, or
  - b. Others when the fraud could have a material effect on the financial statements.
7. We have no knowledge of any allegations of fraud or suspected fraud affecting the entity received in communications from employees, former employees, customers, regulators, citizens, suppliers, or others.
8. We have assessed the risk that the financial statements may be materially misstated as a result of fraud and disclosed to you any such risk identified.
9. We have no knowledge of illegal acts that may materially misstate the financial statements.

**Ongoing Operations**

10. We acknowledge the current economic volatility presents difficult circumstances and challenges for our industry. Entities are potentially facing declines in the fair values of investments and other assets, declines in the volume of business, constraints on liquidity, difficulty obtaining financing or bonding, significant credit quality problems, etc. We understand the values of the assets and liabilities recorded in the financial statements could change rapidly, resulting in material future adjustments to asset values, allowances for accounts and financing receivables, net realizable

District Energy Corporation  
Page 3

value of inventory, etc., that could negatively impact the entity's ability to meet debt covenants or maintain sufficient liquidity.

We acknowledge that you have no responsibility for future changes caused by the current economic environment and the resulting impact on the entity's financial statements. Further, management and governance are solely responsible for all aspects of managing the entity, including questioning the quality and valuation of investments, inventory, and other assets; reviewing allowances for uncollectible amounts; evaluating capital needs and liquidity plans; etc.

### **Related Parties**

11. We have disclosed to you the identity of all of the entity's related parties and all the related-party relationships of which we are aware.

In addition, we have disclosed to you all related-party transactions and amounts receivable from or payable to related parties of which we are aware.

Related-party relationships and transactions have been appropriately accounted for and disclosed in accordance with accounting principles generally accepted in the United States of America.

12. We understand that the term related party refers to:

- Affiliates
- Management and members of their immediate families
- Any other party with which the entity may deal if one party can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.

Another party is also a related party if it can significantly influence the management or operating policies of the transacting parties or if it has an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

The term affiliate refers to a party that directly or indirectly controls, or is controlled by, or is under common control with, the entity.

### **Litigation, Laws, Rulings, & Regulations**

13. We are not aware of any pending or threatened litigation or claims whose effects should be considered when preparing the financial statements. We have not sought or received attorney's services related to pending or threatened litigation or claims during or subsequent to the audit period. Also, we are not aware of any litigation or claims, pending or threatened, for which legal counsel should be sought.
14. We have no knowledge of any communications from regulatory agencies, governmental representatives, employees, or others concerning investigations or allegations of noncompliance with laws and regulations, deficiencies in financial reporting practices, or other matters that could have a material adverse effect on the financial statements.
15. We have disclosed to you all known instances of violations or noncompliance or possible violations or suspected noncompliance with laws and regulations whose effects should be considered when preparing financial statements or as a basis for recording a loss contingency.

District Energy Corporation  
Page 4

16. We have not been designated as a potentially responsible party (PRP or equivalent status) by the Environmental Protection Agency (EPA) or other cognizant regulatory agency with authority to enforce environmental laws and regulations.

**Nonattest Services**

17. You have provided nonattest services, including the following, during the period of this engagement:

- Assistance with the printing and binding of the financial statements

18. With respect to these services:

- a. We have designated a qualified management-level individual to be responsible and accountable for overseeing the nonattest services.
- b. We have established and monitored the performance of the nonattest services to ensure they meet our objectives.
- c. We have made any and all decisions involving management functions with respect to the nonattest services and accept full responsibility for such decisions.
- d. We have evaluated the adequacy of the services performed and any findings that resulted.
- e. Established and maintained internal controls, including monitoring ongoing activities.
- f. We have received the deliverables from you and have stored these deliverables in information systems controlled by us. We have taken responsibility for maintaining internal control over these deliverables.

**Financial Statements & Reports**

19. We do not issue an annual report, nor do we have plans to issue an annual report at this time.

**Transactions, Records, & Adjustments**

20. All transactions have been recorded in the accounting records and are reflected in the financial statements.
21. We have everything we need to keep our books and records.
22. We have disclosed any significant unusual transactions the entity has entered into during the period, including the nature, terms, and business purpose of those transactions.

**Governmental Accounting & Disclosure Matters**

23. With regard to deposit and investment activities:
- a. All deposit, and investment transactions have been made in accordance with legal and contractual requirements.
  - b. Disclosures of deposit and investment balances and risks in the financial statements are consistent with our understanding of the applicable laws regarding enforceability of any pledges of collateral.

District Energy Corporation  
Page 5

- c. We understand that your audit does not represent an opinion regarding the enforceability of any collateral pledges.
- 24. The financial statements include all component units, appropriately present majority equity interests in legally separate organizations and joint ventures with an equity interest, and properly disclose all other joint ventures and other related organizations.
- 25. We have identified and evaluated all potential fiduciary activities. The financial statements include all fiduciary activities required by GASB Statement No. 84, *Fiduciary Activities*, as amended.
- 26. Components of net position (net investment in capital assets, restricted, and unrestricted) are properly classified and, if applicable, approved.
- 27. Capital assets, including infrastructure, are properly capitalized, reported, and, if applicable, depreciated or amortized.
- 28. We have appropriately disclosed the entity's policy regarding whether to first apply restricted or unrestricted resources when an expense is incurred for purposes for which both restricted and unrestricted net position/fund balance is available and have determined that net position is properly recognized under the policy.
- 29. The entity has properly separated information in debt disclosures related to direct borrowings and direct placements of debt from other debt and disclosed any unused lines of credit, collateral pledged to secure debt, terms in debt agreements related to significant default or termination events with finance-related consequences, and significant subjective acceleration clauses in accordance with GASB Statement No. 88.
- 30. The entity's ability to continue as a going concern was evaluated and that appropriate disclosures are made in the financial statements as necessary under GASB requirements.
- 31. The supplementary information required by the Governmental Accounting Standards Board, consisting of management's discussion and analysis has been prepared and is measured and presented in conformity with the applicable GASB pronouncements, and we acknowledge our responsibility for the information. The information contained therein is based on all facts, decisions, and conditions currently known to us and is measured using the same methods and assumptions as were used in the preparation of the financial statements. We believe the significant assumptions underlying the measurement and/or presentation of the information are reasonable and appropriate. There has been no change from the preceding period in the methods of measurement and presentation.

**Accounting & Disclosure**

- 32. All transactions entered into by the entity are final. We are not aware of any unrecorded transactions, side agreements, or other arrangements (either written or oral) that are in place.
- 33. Except as reflected in the financial statements, there are no:
  - a. Plans or intentions that may materially affect carrying values or classifications of assets, deferred outflows of resources, liabilities, deferred inflows of resources, or net position.
  - b. Material transactions omitted or improperly recorded in the financial records.
  - c. Material unasserted claims or assessments that are probable of assertion or other gain/loss contingencies requiring accrual or disclosure, including those arising from environmental remediation obligations.



District Energy Corporation  
Page 6

- d. Events occurring subsequent to the balance sheet date through the date of this letter, which is the date the financial statements were available to be issued, requiring adjustment or disclosure in the financial statements.
  - e. Agreements to purchase assets previously sold.
  - f. Arrangements with financial institutions involving compensating balances or other arrangements involving restrictions on cash balances, lines of credit, or similar arrangements.
  - g. Guarantees, whether written or oral, under which the entity is contingently liable.
  - h. Known or anticipated asset retirement obligations.
34. Except as disclosed in the financial statements, the entity has:
- a. Satisfactory title to all recorded assets, and those assets are not subject to any liens, pledges, or other encumbrances.
  - b. Complied with all aspects of contractual and grant agreements, for which noncompliance would materially affect the financial statements.

**Revenue, Accounts Receivable, & Inventory**

35. Adequate provisions and allowances have been accrued for any material losses from:
- a. Uncollectible receivables.
  - b. Excess or obsolete inventories.
  - c. Sales commitments, including those unable to be fulfilled.
  - d. Purchase commitments in excess of normal requirements or at prices in excess of prevailing market prices.

**Estimates**

36. We have identified all accounting estimates that could be material to the financial statements, and we confirm the appropriateness of the methods and the consistency in their application, the accuracy and completeness of data, and the reasonableness of significant assumptions used by us in making the accounting estimates, including those measured at fair value reported in the financial statements.
37. Significant estimates that may be subject to a material change in the near term have been properly disclosed in the financial statements. We understand that "near term" means the period within one year of the date of the financial statements. In addition, we have no knowledge of concentrations, which refer to volumes of business, revenues, available sources of supply, or markets, loans, investments, or deposits, existing at the date of the financial statements that would make the entity vulnerable to the risk of severe impact in the near term that have not been properly disclosed in the financial statements.

District Energy Corporation  
Page 7

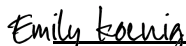
### Fair Value

38. With respect to the fair value measurements of financial and nonfinancial assets and liabilities, if any, recognized in the financial statements or disclosed in the notes thereto:
- a. The underlying assumptions are reasonable and they appropriately reflect management's intent and ability to carry out its stated course of action.
  - b. The measurement methods and significant assumptions used in determining fair value are appropriate in the circumstances and have been consistently applied.
  - c. The significant assumptions appropriately reflect market participant assumptions.
  - d. The disclosures related to fair values are complete, adequate, and in conformity with U.S. GAAP.
  - e. There are no subsequent events that require adjustments to the fair value measurements and disclosures included in the financial statements.

### Tax-Exempt Bonds

39. Tax-exempt bonds issued have retained their tax-exempt status.
40. We have notified you of any instances of noncompliance with applicable disclosure requirements of the SEC Rule 15c2-12 and applicable state laws.

DocuSigned by:



Emily Koenig, Chief Financial Officer  
[ekoenig@les.com](mailto:ekoenig@les.com)

DocuSigned by:



Wade Leibbrandt, Manager, Budgeting &  
Financial Planning  
[wleibbrandt@les.com](mailto:wleibbrandt@les.com)

# TAB VI

# **District Energy Corporation**

## **Independent Auditor's Report and Financial Statements**

December 31, 2022 and 2021



# District Energy Corporation

## December 31, 2022 and 2021

### Contents

Independent Auditor's Report .....	1
------------------------------------	---

Management's Discussion and Analysis (Unaudited) .....	3
--	---

### Financial Statements

Balance Sheets .....	12
Statements of Revenues, Expenses and Changes in Net Position .....	13
Statements of Cash Flows .....	14
Notes to Financial Statements .....	16



## Independent Auditor's Report

Board of Directors  
District Energy Corporation  
Lincoln, Nebraska

### **Opinion**

We have audited the financial statements of District Energy Corporation as of and for the years ended December 31, 2022 and 2021, and the related notes to the financial statements, which collectively comprise District Energy Corporation's basic financial statements as listed in the table of contents.

In our opinion, the accompanying financial statements referred to above present fairly, in all material respects, the financial position of District Energy Corporation, as of December 31, 2022 and 2021, and the changes in financial position and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

### **Basis for Opinion**

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the "Auditor's Responsibilities for the Audit of the Financial Statements" section of our report. We are required to be independent of District Energy Corporation and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Responsibilities of Management for the Financial Statements**

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about District Energy Corporation's ability to continue as a going concern for 12 months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

### **Auditor's Responsibilities for the Audit of the Financial Statements**

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of District Energy Corporation's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about District Energy Corporation's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

#### ***Required Supplementary Information***

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

**FORVIS, LLP**

Lincoln, Nebraska  
April 3, 2023

**District Energy Corporation**  
**Management's Discussion and Analysis (Unaudited)**  
**December 31, 2022 and 2021**

## **2022 SIGNIFICANT EVENTS**

- Additional ice storage was installed at the County/City Thermal Plant to increase capacity and adequately serve customer demand. The new ice tank technology allows for cooling services during intermittent warm periods throughout the winter.
- Updated pumps and associated control equipment were installed on the deaerator at the State Boiler plant greatly improving reliability.
- The West Haymarket Plant's underground distribution system was evaluated after a hot water leak was discovered in late 2020. Evaluations focused on determining if additional corrosion may occur in the future and assisted in creating plans to address the related findings in 2023.
- The Canopy Park Development piping extension at the West Haymarket Plant began taking thermal service in December 2022.

## **FINANCIAL REPORT OVERVIEW**

The information provided in the Management's Discussion and Analysis (MD&A) section of the Financial Report explains the activities, plans and events that impacted DEC's financial position and operating results for the years ended December 31, 2022, 2021 and 2020. This overview from management is one of the three components of the Financial Report. The other two components are the Financial Statements and Notes to the Financial Statements. The Financial Report should be read in its entirety to understand the events and conditions impacting District Energy Corporation (DEC).

**Balance Sheet** - This statement presents assets, deferred outflows of resources, liabilities, deferred inflows of resources and net position. Assets and liabilities are each divided to distinguish current and noncurrent. This statement reveals liquidity, financial flexibility and capital structure.

**Statement of Revenues, Expenses and Changes in Net Position** - Operating results are separated into operating revenue and expense and non-operating revenue and expense. This statement is useful in analyzing financial health.

**Statement of Cash Flows** - This statement classifies sources and uses of cash summarized by operating, capital and related financing and investing activities.

**Notes to Financial Statements** - The notes provide additional information to support the Financial Statements.

# FINANCIAL POSITION AND OPERATING RESULTS

## CONDENSED BALANCE SHEETS

	2022	2021	2020
Current Assets	\$ 7,373,297	\$ 6,393,835	\$ 9,420,821
Noncurrent Assets	5,483,845	5,911,374	4,234,097
Capital Assets	62,254,612	64,156,979	66,524,920
Deferred Outflows of Resources	1,172,706	1,236,379	-
TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES	\$ 76,284,460	\$ 77,698,567	\$ 80,179,838
Current Liabilities	\$ 5,333,485	\$ 5,187,721	\$ 49,494,421
Noncurrent Liabilities	64,764,836	67,976,950	26,240,790
TOTAL LIABILITIES	70,098,321	73,164,671	75,735,211
Net investment in capital assets	(819,025)	(1,921,050)	(5,999,587)
Restricted for debt service	1,673,000	1,574,422	866,702
Unrestricted	5,332,164	4,880,524	9,577,512
NET POSITION	6,186,139	4,533,896	4,444,627
TOTAL LIABILITIES AND NET POSITION	\$ 76,284,460	\$ 77,698,567	\$ 80,179,838

### Comparison of 2022 to 2021

Total assets and deferred outflows of resources decreased \$1,414,107 or 1.8 percent in 2022 as compared to 2021. Current assets increased \$979,462 or 15.3 percent due primarily to increases in the operating fund balance related to increased revenue. Noncurrent assets decreased \$427,529 or 7.2 percent, primarily due to lower Financing Receivable balances and complete repayment on the SAP Project asset balance. Capital assets decreased \$1,902,367 or 3.0 percent, primarily due to routine monthly depreciation. Deferred outflows of resources decreased \$63,673 or 5.1 percent due to the amortization of deferred losses on refunded debt.

Total liabilities decreased \$3,066,350 or 4.2 percent in 2022 compared to 2021. Current liabilities increased \$145,764 or 2.8 percent due to increased accounts payable. Noncurrent liabilities decreased \$3,212,114 or 4.7 percent due to bond principal payments and premium amortization.

### Comparison of 2021 to 2020

Total assets and deferred outflows of resources decreased \$2,481,271 or 3.1 percent in 2021 compared to 2020. Current assets decreased a net amount of \$3,026,986 or 32.1 percent due primarily to decreases in the operating fund balance related to the use of cash on hand to pay down the J.P. Morgan Chase Bank, N.A line of credit and the Series 2010B and Series 2013 Bonds. Noncurrent assets increased \$1,677,277 or 39.6 percent, primarily due to increased restricted fund balance requirements following the Series 2021 Bond issuance. Capital assets decreased \$2,367,941 primarily due to accumulated depreciation from routine monthly depreciation expense. Deferred outflows of resources, which consist of deferred losses on refunded debt, increased due to the refunding loss incurred from the defeasement of the Series

2010B and Series 2013 Bonds.

Total liabilities decreased \$2,570,540 or 3.4 percent in 2021 compared to 2020. Current liabilities decreased by \$44,306,700 primarily due to paying off the J.P. Morgan Chase Bank, N.A line of credit in 2021. Noncurrent liabilities increased \$41,736,160 primarily due to the new debt issuance of the Series 2021A, 2021B, and 2021 NSP Revenue Bonds.

## CONDENSED STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN NET POSITION

	2022	2021	2020
Operating Revenues	\$ 12,058,862	\$ 10,503,724	\$ 10,786,425
Operating Expenses	9,038,343	8,774,380	8,234,096
OPERATING INCOME	\$ 3,020,519	\$ 1,729,344	\$ 2,552,329
Interest Expense	\$ (1,461,673)	\$ (1,747,100)	\$ (2,101,522)
Other Nonoperating Revenues	93,397	107,025	329,226
TOTAL NONOPERATING EXPENSES	(1,368,276)	(1,640,075)	(1,772,296)
CHANGE IN NET POSITION	\$ 1,652,243	\$ 89,269	\$ 780,033

## OPERATING REVENUES

### Comparison of 2022 to 2021

Operating revenues for 2022 were \$12,058,862 an increase of \$1,555,138 or 14.8 percent compared to 2021 operating revenues of \$10,503,724. Operating revenues increased primarily due to a rise in the LES Operations Center's (LOC) demand financing rate.

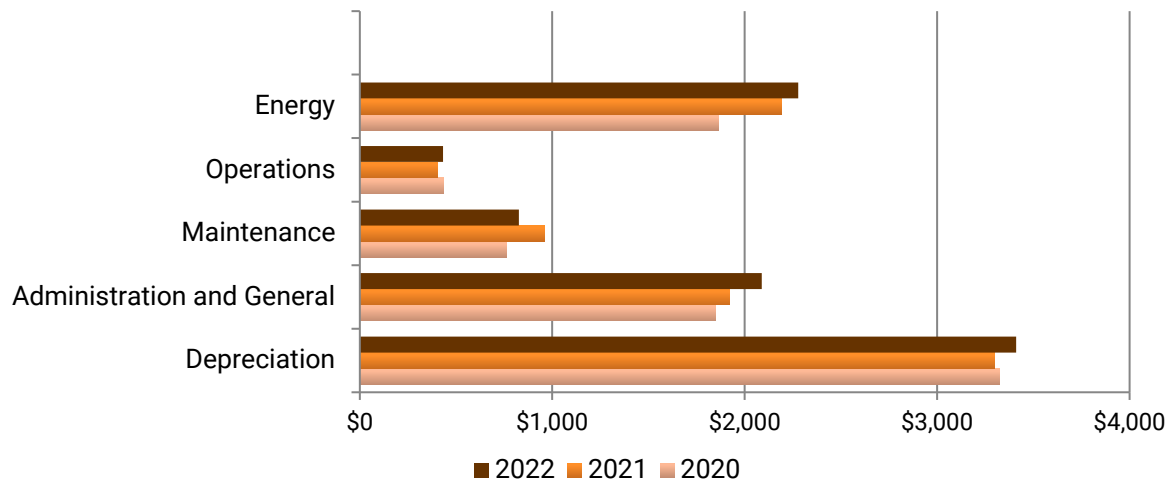
### Comparison of 2021 to 2020

Operating revenues for 2021 were \$10,503,724, a decrease of \$282,701 or 2.6 percent compared to 2020 operating revenues of \$10,786,425. Operating revenues decreased primarily due to a reduction of the demand financing rate for the LOC and Nebraska State Penitentiary (NSP) plants.



## OPERATING EXPENSES

(Dollars in thousands)



### Comparison of 2022 to 2021

Operating expenses for 2022 were \$9,038,343, an increase of \$263,963 or 3.0 percent over 2021 operating expenses of \$8,774,380. Energy expenses increased by \$86,612 or 4.0 percent, primarily due to increased natural gas expenses. Operation and maintenance expenses decreased \$99,350 or 7.3 percent, primarily due to a significant decrease in maintenance costs at the West Haymarket Plant due to extensive valve repair costs in 2021. Administration and general expenses increased by \$166,090 or 8.6 percent due to increased management fees and insurance premiums. Depreciation expense increased \$110,611 or 3.4 percent due to additional depreciable assets added during the year.

### Comparison of 2021 to 2020

Operating expenses for 2021 were \$8,774,380, an increase of \$540,284 or 6.6 percent over 2020 operating expenses of \$8,234,096. Energy expenses increased \$327,925 or 17.6 percent, primarily due to increased natural gas expenses during Winter Storm Uri. Operation and maintenance expenses increased by \$161,907 or 13.5 percent due to maintenance costs to repair a hot water leak in the West Haymarket Plant's underground distribution system. Administration and general expenses increased \$73,413 or 4.0 percent due to increased management fee and insurance premiums. Depreciation expense decreased \$22,961 or 0.7 percent due to the retirement of depreciable assets early in 2021.

## RATES

DEC's rates are designed using cost of service principles. The Board approves an annual budget, including operating, capital, and customer rates. Customers pay the monthly charges outlined in the Thermal/Energy Service Agreements, which are subject to adjustment by DEC based on cost of service. Additionally, rates may be modified by DEC at any time with a 60-day written notice to the customer.

## CASH AND FINANCING ACTIVITIES

### CONDENSED STATEMENTS OF CASH FLOWS

	2022	2021	2020
Cash Flows from Operating Activities	\$ 7,100,570	\$ 5,312,908	\$ 7,256,619
Cash Flows from Capital and Related Financing Activities	(6,022,866)	(6,281,099)	(4,950,573)
Cash Flows from Investing Activities	3,644,347	(3,766,384)	477,277
NET CHANGE IN CASH AND CASH EQUIVALENTS	<u>\$ 4,722,051</u>	<u>\$ (4,734,575)</u>	<u>\$ 2,783,323</u>

**Cash flows from operating activities** contain transactions involving customers and suppliers.

**Cash flows from capital and related financing activities** contain transactions involving the acquisition and construction of capital assets and the long-term debt related to that capital.

**Cash flows from investing activities** contain transactions related to interest income and security purchases and maturities.

#### Comparison of 2022 to 2021

Cash inflows from operating activities for 2022 were \$7,100,570, an increase of \$1,787,662 from 2021, primarily due to higher customer revenues received. Cash outflows used for capital and related financing activities were \$6,022,866, a decrease of \$258,233 from 2021, due to financing activities during the Series 2021 Bond issuance in the previous year. Cash inflows from investing activities were \$3,644,347 in 2022 compared to cash outflows of \$3,766,384 in 2021 for a year-over-year increase of \$7,410,731. This change is primarily due to increased sales of investments in 2022.

#### Comparison of 2021 to 2020

Cash inflows from operating activities for 2021 were \$5,312,908, a decrease of \$1,943,711 from 2020. The decrease resulted from higher amounts paid to suppliers and less revenues received. Cash outflows used for capital and related financing activities were \$6,281,099, an increase of \$1,330,526 from 2020, primarily due to the financing activities related to the Series 2021 Bond issuances. Cash outflows from investing activities were \$3,766,384 in 2021 compared to cash inflows of \$477,277 in 2020 for a year-over-year decrease of \$4,243,661. This change is primarily due to restricted funds requirements increasing in relation to the Series 2021 Bond issuance, which led to increased investment purchases.

### FINANCING

DEC has entered into a \$5,000,000 line of credit agreement with J.P. Morgan Chase Bank, N.A to provide short-term liquidity as well as interim financing for current and future capital investments. The line of credit agreement allows for both tax-exempt and taxable borrowings

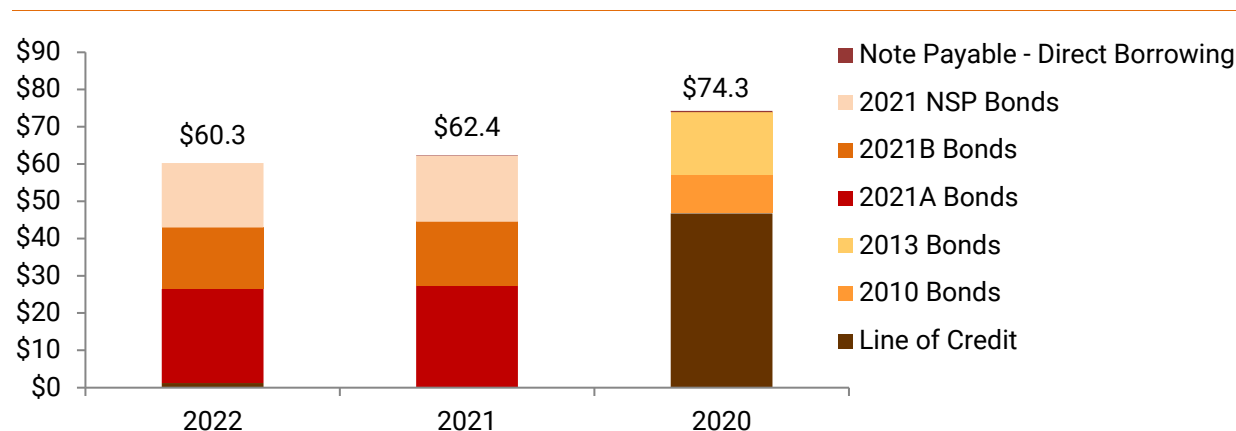
with an expiration of August 2024. The amount outstanding under this line of credit was \$1,200,000 and \$0 as of December 31, 2022 and 2021, respectively.

On April 1, 2021, DEC issued \$63,445,000 of Revenue and Revenue Refunding Bonds in three series known as the Series 2021 Bond issuance. These funds refunded several outstanding long-term debt obligations, paid down the balance on the J.P. Morgan line of credit, and approximately \$1,000,000 was held to be used for future capital improvements. As part of these bond transactions, DEC defeased a combined total of \$27,165,000 of Series 2010B and 2013 Revenue Bonds, of which \$25,092,777 came from bond proceeds and the remainder from available cash on hand. The Series 2021A Facility Revenue Refunding Bonds refunded \$10,405,000 of the Series 2010B Bonds and provided for a payment of \$21,225,000 towards the J.P. Morgan line of credit. The Taxable Series 2021B Facility Revenue Refunding refunded \$16,760,000 of the Series 2013 Bonds. The Series 2021 NSP Facility Revenue Bonds provided for a payment of \$21,200,000 towards the J.P. Morgan line of credit. The refinancing of all of DEC's existing bonds resulted in a net present value debt service savings of approximately \$2,300,000 for DEC customers.

The following chart shows outstanding debt as of December 31, 2022, 2021 and 2020.

## Outstanding Debt

(Dollars in millions)



## RATINGS

In establishing an entity's bond rating, bond ratings agencies consider an entity's operations, characteristics and financial strength. Fitch Ratings (Fitch) and Standard & Poor's Global Ratings (S&P) assigned ratings for the Series 2021 Bond issuances.

The credit ratings in effect on December 31, 2022, were as follows:

	<b>S&amp;P</b>	<b>Fitch</b>
<b>2021A Facility Revenue Refunding Bonds</b>	<b>AA+</b>	<b>AA+</b>
<b>2021B Facility Revenue Refunding Bonds</b>	<b>AA+</b>	<b>AA+</b>
<b>2021 NSP Facility Revenue Bonds</b>	<b>AA+</b>	<b>AA</b>

## DEBT SERVICE COVERAGE

The following table reflects the calculation of the debt service coverage ratio. The ratio reflects DEC's year-end funds available to pay its debt service. DEC's bond resolution establishes a debt service coverage requirement of 1.0.

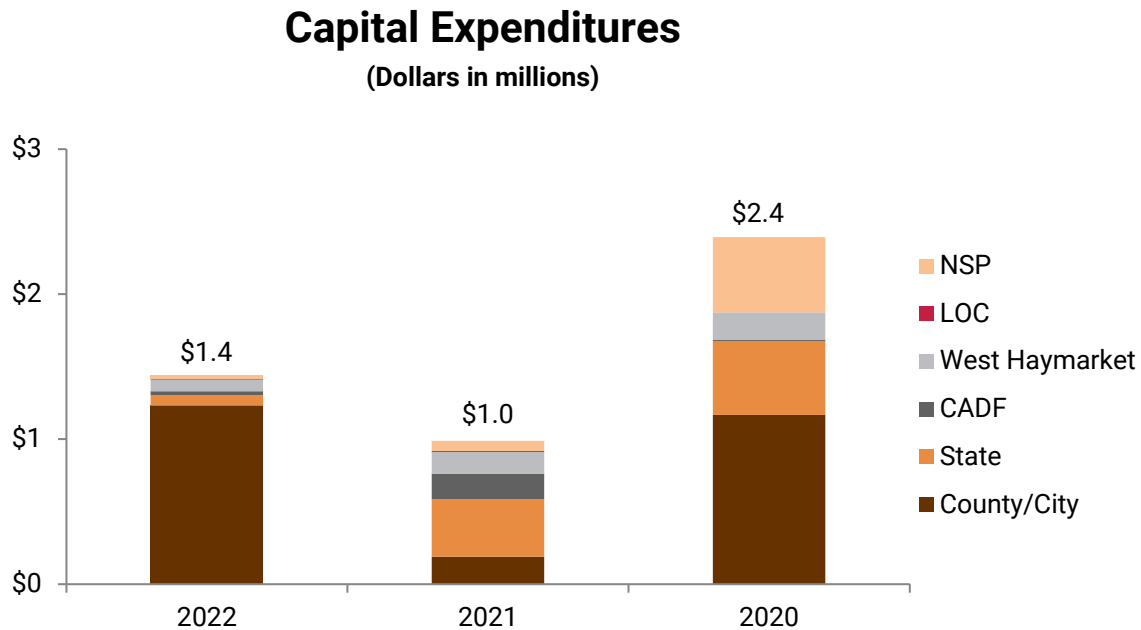
	<b>2022</b>	<b>2021</b>	<b>2020</b>
OPERATING REVENUE	\$ 12,058,862	\$ 10,503,724	\$ 10,786,425
Energy	2,278,869	2,192,257	1,864,332
Operations	432,556	401,223	436,576
Maintenance	826,660	957,343	760,083
Administration and General	2,089,235	1,923,145	1,849,732
TOTAL OPERATING EXPENSES (EXCLUDING DEPRECIATION)	5,627,320	5,473,968	4,910,723
Net Operating Revenue	6,431,542	5,029,756	5,875,702
Interest Income*	93,397	58,327	131,478
Transfer to Rate Stabilization Fund	(57,000)	(50,000)	(50,000)
Financing Receipts**	255,385	201,498	195,776
AVAILABLE FOR DEBT SERVICE	\$ 6,723,324	\$ 5,239,581	\$ 6,152,956
DEBT SERVICE	\$ 5,640,264	\$ 4,282,430	\$ 2,579,382
DEBT SERVICE COVERAGE RATIO	1.19	1.22	2.39

\*Interest earned on the rate stabilization fund is included within the Interest Income line above.

\*\*Financing receipts for energy efficiency projects related to the CADF Thermal Plant and State of Nebraska (see Note 3).

## CAPITAL EXPENDITURES

Capital expenditures for 2022, 2021 and 2020 are shown in the chart below.



Significant projects during 2022 included:

- County/City Thermal Plant
  - Additional ice storage was installed to increase capacity and adequately serve customer demand.
- State Boiler Plant
  - An upgrade of the pumps and associated control equipment was performed on the deaerator, which greatly improved reliability and reduced operator callouts.
- West Haymarket Plant
  - A pipe extension was necessary to provide service to the Canopy Park Development in the West Haymarket. Design, construction and installation of a four-pipe extension started in 2020 and continued into 2022. The Canopy Park Development began taking thermal service late in 2022.
  - The underground distribution system was evaluated to investigate potential corrosion after a hot water leak was identified in late 2020. Plans were created to address identified concerns in 2023.

Significant projects during 2021 included:

- County/City Thermal Plant
  - A project to replace the plant's two fire-tube steam boilers with higher-efficiency hot water boilers began in early 2020. After COVID-19-related delays, construction was completed in late 2020, with the final tie-in occurring in 2021.

- State Boiler Plant
  - An upgrade of the controls system to the new System Platform standard began in early 2020 and was completed in 2021. This system provides improved functionality and better interfacing capability for operation between various locations.
  - Three dual-fuel burners were replaced on existing boilers to promote efficient operation and improve turn-down. The first burner was installed in late 2020, and the other two burners were installed and tied to the Burner Management System in 2021.
- County Adult Detention Facility Plant
  - An upgrade of the generator switchgear controls was completed. The project allows for better local and remote monitoring of the backup diesel engine generators.
- West Haymarket Plant
  - Work began in 2020 to install a revenue-grade meter to monitor flow rates for chilled water as it leaves the plant. The flow meter was installed in early 2021.
  - A pipe extension was necessary to support Canopy Park Development services in the West Haymarket Joint Public Agency footprint. Design, construction, and installation of a four-pipe extension occurred in 2020, with interconnection occurring in 2021.

## **CONTACT INFORMATION**

This financial report is designed to provide a general overview of DEC's financial status for 2022, 2021 and 2020. Questions concerning any information provided in this report or requests for additional financial information can be addressed to the DEC Chief Financial Officer at Lincoln Electric System 9445 Rokeby Road, Lincoln, NE 68526 or by email at [finance@les.com](mailto:finance@les.com).



# District Energy Corporation

## Balance Sheets

### December 31, 2022 and 2021

	2022	2021
<b>Assets and Deferred Outflows of Resources</b>		
<b>Current Assets</b>		
Cash and cash equivalents	\$ 2,653,625	\$ 766,205
Investments	1,278,092	2,112,181
Restricted cash, cash equivalents and investments	2,842,744	2,815,740
Accounts receivable	208,940	353,246
Financing receivables	238,749	207,395
Inventory	131,147	120,133
Prepaid expenses	20,000	18,935
Total current assets	<u>7,373,297</u>	<u>6,393,835</u>
<b>Noncurrent Assets</b>		
Restricted cash, cash equivalents and investments	3,900,318	3,827,310
Financing receivables, net	1,067,627	1,354,366
Costs recoverable from future billings	515,900	598,010
Other noncurrent assets	-	131,688
Total noncurrent assets	<u>5,483,845</u>	<u>5,911,374</u>
<b>Capital Assets</b>		
Utility plant	88,530,482	84,332,723
Accumulated depreciation	(27,917,942)	(24,506,919)
Construction work in progress	<u>1,642,072</u>	<u>4,331,175</u>
Total capital assets	<u>62,254,612</u>	<u>64,156,979</u>
<b>Deferred Outflows of Resources</b>		
Deferred loss on refunded debt	<u>1,172,706</u>	<u>1,236,379</u>
Total assets and deferred outflows of resources	<u>\$ 76,284,460</u>	<u>\$ 77,698,567</u>
<b>Liabilities and Net Position</b>		
<b>Current Liabilities</b>		
Accounts payable	\$ 792,311	\$ 593,931
Current portion of long-term debt	3,290,000	3,281,688
Accrued interest payable	1,181,174	1,242,102
Unearned revenue	<u>70,000</u>	<u>70,000</u>
Total current liabilities	<u>5,333,485</u>	<u>5,187,721</u>
<b>Long-term Debt, Net</b>	<u>64,764,836</u>	<u>67,976,950</u>
Total liabilities	<u>70,098,321</u>	<u>73,164,671</u>
<b>Net Position</b>		
Net investment in capital assets	(819,025)	(1,921,050)
Restricted for debt service	1,673,000	1,574,422
Unrestricted	<u>5,332,164</u>	<u>4,880,524</u>
Total net position	<u>6,186,139</u>	<u>4,533,896</u>
Total liabilities and net position	<u>\$ 76,284,460</u>	<u>\$ 77,698,567</u>

**District Energy Corporation**  
**Statements of Revenues, Expenses, and Changes in Net Position**  
**Years Ended December 31, 2022 and 2021**

	<u>2022</u>	<u>2021</u>
<b>Operating Revenues</b>	\$ 12,058,862	\$ 10,503,724
<b>Operating Expenses</b>		
Energy	2,278,869	2,192,257
Operations	432,556	401,223
Maintenance	826,660	957,343
Administration and general	2,089,235	1,923,145
Depreciation	3,411,023	3,300,412
Total operating expenses	<u>9,038,343</u>	<u>8,774,380</u>
<b>Operating Income</b>	<u>3,020,519</u>	<u>1,729,344</u>
<b>Non-Operating Revenues (Expenses)</b>		
Interest expense on long-term debt	(1,461,673)	(1,747,100)
Investment income	93,397	58,327
Interest rate subsidy - Build America Bonds	-	48,698
Total non-operating expenses (net)	<u>(1,368,276)</u>	<u>(1,640,075)</u>
<b>Change in Net Position</b>	1,652,243	89,269
<b>Net Position - Beginning of Year</b>	<u>4,533,896</u>	<u>4,444,627</u>
<b>Net Position - End of Year</b>	<u><u>\$ 6,186,139</u></u>	<u><u>\$ 4,533,896</u></u>

**District Energy Corporation**  
**Statements of Cash Flows**  
**Years Ended December 31, 2022 and 2021**

	<u>2022</u>	<u>2021</u>
<b>Operating Activities</b>		
Received from sales to customers and users	\$ 12,476,312	\$ 10,730,579
Paid to suppliers for goods and services	<u>(5,375,742)</u>	<u>(5,417,671)</u>
Net cash provided by operating activities	<u>7,100,570</u>	<u>5,312,908</u>
<b>Capital and Related Financing Activities</b>		
Capital expenditures for utility plant	(1,442,245)	(1,075,709)
Principal payments on long-term debt	(3,281,688)	(48,190,649)
Interest payments on long-term debt	(2,498,933)	(1,293,501)
Interest rate subsidy received - Build America Bonds	-	144,991
Advances on line of credit	1,200,000	-
Net proceeds from issuance of long-term debt	-	46,510,763
Transfer to bond escrow agent	<u>-</u>	<u>(2,376,994)</u>
Net cash used in capital and related financing activities	<u>(6,022,866)</u>	<u>(6,281,099)</u>
<b>Investing Activities</b>		
Net (purchases) and sales of investments	3,568,708	(3,830,380)
Interest received	<u>75,639</u>	<u>63,996</u>
Net cash provided by (used in) investing activities	<u>3,644,347</u>	<u>(3,766,384)</u>
<b>Net Change in Cash and Cash Equivalents</b>	4,722,051	(4,734,575)
<b>Cash and Cash Equivalents - Beginning of Year</b>	<u>2,017,596</u>	<u>6,752,171</u>
<b>Cash and Cash Equivalents - End of Year</b>	<u><u>\$ 6,739,647</u></u>	<u><u>\$ 2,017,596</u></u>
<b>Reconciliation of Cash and Cash Equivalents to the Balance Sheets</b>		
Cash and cash equivalents	2,653,625	766,205
Restricted cash, cash equivalents and investments - current	2,842,744	2,815,740
Restricted cash, cash equivalents and investments - noncurrent	<u>3,900,318</u>	<u>3,827,310</u>
Total cash, cash equivalents and investments	9,396,687	7,409,255
Less: investments not classified as cash equivalents	<u>(2,657,040)</u>	<u>(5,391,659)</u>
Total cash and cash equivalents	<u><u>\$ 6,739,647</u></u>	<u><u>\$ 2,017,596</u></u>

**District Energy Corporation**  
**Statements of Cash Flows - Continued**  
**Years Ended December 31, 2022 and 2021**

	<u>2022</u>	<u>2021</u>
<b>Reconciliation of Operating Income To</b>		
<b>Net Cash Provided By Operating Activities</b>		
Operating income	\$ 3,020,519	\$ 1,729,344
Noncash items included in operating income		
Depreciation	3,411,023	3,300,412
Changes in operating assets and liabilities		
Accounts receivable	162,064	25,357
Inventory	(11,014)	(21,313)
Prepaid expenses	(1,065)	294,238
Financing receivable	255,385	201,499
Costs recoverable from future billings	-	2,349
Accounts payable	131,970	(434,627)
Other noncurrent assets	131,688	215,649
Net cash provided by operating activities	<u>\$ 7,100,570</u>	<u>\$ 5,312,908</u>
<b>Supplemental Non-cash Activities</b>		
Capital asset acquisitions included in accounts payable	\$ 80,395	\$ 13,984
Bond premium amortization	\$ 1,122,114	\$ 882,147
Amortization of deferred loss on refunding	\$ 63,673	\$ 47,754

# District Energy Corporation

## Notes to Financial Statements

December 31, 2022 and 2021

### Note 1: Summary of Significant Accounting Policies

#### ***Reporting Entity***

District Energy Corporation (DEC) was established in 1989 as an inter-local entity with the primary function to own, operate, maintain and finance the heating and cooling facilities utilized by certain City of Lincoln, Lancaster County and State of Nebraska buildings.

The Board of Directors of DEC consists of five members: two appointed by the Lancaster County Board of Commissioners; two by the Mayor of Lincoln, who must be confirmed by the Lincoln City Council; and one by Lincoln Electric System (LES).

#### ***Basis of Accounting and Presentation***

DEC's activities are accounted for on the economic resources measurement focus and use the accrual basis of accounting. Under the accrual basis of accounting, revenues are recognized when earned and expenses are recorded when the liability is incurred or economic asset used. Revenues, expenses, gains, losses, assets and liabilities resulting from exchange and exchange-like transactions are recognized when the exchange transaction takes place. DEC prepares its financial statements as a business-type activity in conformity with applicable pronouncements of the Governmental Accounting Standards Board (GASB).

DEC's accounting policies follow the provisions of GASB Codification Section Re10, *Regulated Operations*, which permits an entity with cost-based rates and Board authorization to include certain revenues or costs in a period other than the period in which revenues or costs would be reported by an unregulated entity to the extent that the rate-regulated entity is recovering or expects to recover such amounts in rates charged to its customers. This guidance applies to DEC because DEC's rates are established and approved by the DEC Board of Directors.

#### ***Use of Estimates***

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and deferred inflows and outflows of resources and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues, expenses and other changes in net position during the reporting period. Actual results could differ from those estimates.

# **District Energy Corporation**

## **Notes to Financial Statements**

**December 31, 2022 and 2021**

### ***Cash Equivalents***

DEC considers all highly liquid investments with an original maturity of three months or less at the date of purchase to be cash equivalents. On December 31, 2022 and 2021, cash equivalents consisted of money market funds, certain short-term U.S. agency obligations and certain short-term U.S Treasury securities.

### ***Investments and Investment Income***

DEC's investments in money market mutual funds are carried at cost, which approximates fair value. All other investments are carried at fair value, which is the amount at which an investment could be exchanged in a current transaction between willing parties. Fair value is based on quoted market prices. Investment income includes interest income and the net change for the year in the fair value of investments.

### ***Revenue Recognition and Accounts Receivable***

Revenues are recorded based on the period of customer usage and billings for revenues are rendered on a monthly basis. As all receivables are from member governments, no allowance for uncollectible accounts is considered necessary at December 31, 2022 and 2021.

### ***Inventory***

Inventories are valued at the lower of cost or market utilizing the average cost method.

### ***Costs Recoverable from Future Billings***

Certain income and expense items which would be recognized during the current period are deferred and not included in the determination of the change in net position until such costs are expected to be recovered through rates charged to customers, in accordance with the provisions of GASB Codification Section Re 10, *Regulated Operations*. At December 31, 2022 and 2021, costs recoverable from future billings are comprised of costs incurred in relation to DEC's debt issuances.

### ***Capital Assets***

Capital assets are recorded at historical cost. Major outlays for utility plant are capitalized as projects are constructed. Routine maintenance, repairs and minor replacement costs are charged as expenses when incurred. Utility plant in service is depreciated using the straight-line method over a five to thirty-year period.



# District Energy Corporation

## Notes to Financial Statements

December 31, 2022 and 2021

DEC records all assets for which it has primary responsibility for managing. Accounting guidance states, "governments that have the primary responsibility for managing an infrastructure asset should report the asset." Accordingly, it has been determined that if DEC bears the primary responsibility under an agreement to maintain and operate assets, these assets should be recorded on DEC's books. If, however, the customer is responsible for maintaining the asset, then the agreement should be a financing transaction and DEC records a receivable rather than a capital asset. There are certain facilities which DEC has funded, are maintained and operated by DEC, but which the customer has an option to purchase in the future. These options have never been exercised and the chances of ownership transfer taking place via this option are considered remote at best, therefore these facilities are considered assets of DEC.

### ***Deferred Loss on Refunded Debt***

Costs incurred in connection with the refinancing of various bond issuances are being amortized over the remaining life of the old bonds or the life of the new bonds, whichever is shorter. Amortization is recorded as a component of interest expense within non-operating expenses. The deferred loss on refunded debt balance was \$1,172,706 and \$1,236,379 as of December 31, 2022 and 2021, respectively.

### ***Unearned Revenue***

Unearned revenue relates to the fixed portion of the annual fee charged to the State of Nebraska for the contract to provide thermal services, which is amortized over the 12-month period relating to the contract.

### ***Net Position Classification***

Net position is required to be classified into three components, which are net investment in capital assets, restricted and unrestricted. These classifications are defined as follows:

***Net investment in capital assets*** - This component of net position consists of capital assets, net of accumulated depreciation, reduced by the outstanding balances of any bonds, mortgages, notes, or other borrowings attributable to the acquisition, construction, or improvement of those assets. Deferred outflows of resources and deferred inflows of resources attributable to the acquisition, construction, or improvement of those assets or related debt are also included in this component of net position. If there are significant unspent related debt proceeds at year-end, the portion of the debt attributable to the unspent proceeds is not included in the calculation of net investment in capital assets.

# District Energy Corporation

## Notes to Financial Statements

December 31, 2022 and 2021

**Restricted** - This component of net position consists of constraints placed on net position use through external constraints imposed by creditors (such as through debt covenants), contributors, or laws or regulations of other governments or constraints imposed by law through constitutional provisions or enabling legislation.

**Unrestricted** - This component of net position consists of the net amount of the assets and liabilities that do not meet the definition of "restricted" or "net investment in capital assets."

When both restricted and unrestricted resources are available for use, it is DEC's intent to use restricted resources first, then unrestricted resources as they are needed.

### ***Classification of Revenues and Expenses***

Operating revenues and expenses generally result from providing services and producing and delivering goods in connection with DEC's principal ongoing operations. The principal operating revenues of DEC are charges to customers for services. Operating expenses include the cost of services, administrative expenses and depreciation of capital assets. All revenues and expenses not meeting this definition are reported as non-operating revenues and expenses.

### ***Income Taxes***

DEC is exempt from federal and state income taxes as it is a body corporate and politic of the State of Nebraska.

## **Note 2: Deposits and Investments**

### ***Deposits***

State statutes require banks to give a bond, letter of credit, or pledge government securities to DEC in the amount of all deposits. The statutes allow pledged securities to be reduced by the amount of the deposit insured by the Federal Deposit Insurance Corporation (FDIC). DEC's cash deposits are insured up to \$250,000 by the FDIC.

### ***Investments***

DEC may invest in U.S. Government securities and agencies, federal instrumentalities, repurchase agreements, corporate issues, money market mutual funds, interest bearing time deposits or savings accounts, state and/or local government taxable and/or tax-

# District Energy Corporation

## Notes to Financial Statements

December 31, 2022 and 2021

exempt debt and other fixed term investments as designated in the DEC investment policy.

### ***Fair Value Measurements***

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value measurements must maximize the use of observable inputs and minimize the use of unobservable inputs. There is a hierarchy of three levels of inputs that may be used to measure fair value:

Level 1 – Quoted prices in active markets for identical assets or liabilities.

Level 2 – Observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 – Unobservable inputs supported by little or no market activity and are significant to the fair value of the assets or liabilities.

Money market mutual funds are carried at cost and thus are not included within the fair value hierarchy.

The following tables present the fair value measurements of DEC's assets recognized in the accompanying financial statements measured at fair value on a recurring basis and the level within the fair value hierarchy in which the fair value measurements fall at year-end.

# District Energy Corporation

## Notes to Financial Statements

### December 31, 2022 and 2021

As of December 31, 2022 and 2021, DEC had the following investments:

		Maturities in Years			Credit Ratings Moody's / S&P	Fair Value Hierarchy Level
December 31, 2022	Carrying Value	Less Than 1	1-5			
Money market mutual funds	\$ 4,173,277	\$ 4,173,277	\$ -	Aaa/AAAm	N/A	
U.S. agency obligations	4,706,903	4,706,903	-	Aaa/AA+	2	
	<u>\$ 8,880,180</u>	<u>\$ 8,880,180</u>	<u>\$ -</u>			
		Maturities in Years			Credit Ratings Moody's / S&P	Fair Value Hierarchy Level
December 31, 2021	Carrying Value	Less Than 1	1-5			
Money market mutual funds	\$ 1,885,767	\$ 1,885,767	\$ -	Aaa/AAAm	N/A	
U.S. Treasury securities	4,683,790	4,683,790	-	Aaa/AA+	2	
U.S. agency obligations	2,820,051	2,820,051	-	P-1/A-1+	2	
	<u>\$ 9,389,608</u>	<u>\$ 9,389,608</u>	<u>\$ -</u>			

#### **Interest Rate Risk**

Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment. DEC's principal investment strategy is to buy and hold securities to maturity, which reduces interest rate risk.

#### **Credit Risk**

Credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations per DEC investment guidelines. Corporate issues, state and/or local government taxable and/or tax-exempt debt and money market funds are the only current investment types that require a minimum specific rating. All such investments held as of December 31, 2022 and 2021 met minimum credit ratings as required by DEC's investment policy.

#### **Custodial Credit Risk**

For an investment, custodial credit risk is the risk that, in the event of a failure of the counterparty, DEC would not be able to recover the value of its investment securities that are in the possession of an outside party. All investments are held in DEC's name, as required by the investment policy.

# District Energy Corporation

## Notes to Financial Statements

December 31, 2022 and 2021

### Concentration of Credit Risk

Concentration of credit risk is the risk associated with the amount of investments DEC has with any one issuer that exceeds 5 percent or more of its total investments. Investments issued or explicitly guaranteed by the U.S. Government are excluded from this requirement. DEC's investment policy places the following limits on the amount that may be invested in any one type of investment and/or issuer.

Investment Type	Portfolio Composition	Limits of Individual Issuers	Maturity Limitations
U.S. Government securities	100%	None	10 years
U.S. Government agencies	100%	None	10 years
Federal instrumentalities	100%	None	10 years
Instrumentalities of the U.S.	20%	5%	10 years
Interest-bearing time deposit or savings accounts	100%	15%	5 years
Repurchase agreements	50%	15%	90 days
Corporate issues	50%	5%	
Banker's acceptances			180 days
Commercial paper			270 days
Corporate notes			5 years
Money market mutual funds	100%	25%	N/A
State and/or local government taxable and/or tax-exempt debt	30%	5%	3 years
Other fixed term investments	25%	25%	5 years

At December 31, 2022 and 2021 DEC had the following investment concentrations:

	Portfolio Composition December 31,	
	2022	2021
U.S. sponsored agency obligations		
Federal Home Loan Bank	47.32%	30.03%
Federal Home Loan Mortgage Corp	5.68%	0.00%

# District Energy Corporation

## Notes to Financial Statements

December 31, 2022 and 2021

### Summary of Carrying Values

The carrying values of cash deposits and investments as of December 31, 2022 and 2021 were as follows:

	2022	2021
Cash Deposits	\$ 1,794,599	\$ 131,828
Investments	8,880,180	9,389,608
	<u>\$ 10,674,779</u>	<u>\$ 9,521,436</u>
Current Assets		
Cash and cash equivalents		
Operating funds	\$ 2,581,860	\$ 764,062
Rate Stabilization Fund	71,765	2,143
Total	<u>2,653,625</u>	<u>766,205</u>
Investments		
Operating funds	773,292	1,598,395
Rate Stabilization Fund	504,800	513,786
Total	<u>1,278,092</u>	<u>2,112,181</u>
Restricted cash, cash equivalents and investments		
Bond principal and interest funds	<u>2,842,744</u>	<u>2,815,740</u>
Noncurrent Assets		
Restricted cash, cash equivalents and investments		
Bond reserve funds	2,837,597	2,826,951
Construction funds	1,062,721	1,000,359
Total	<u>3,900,318</u>	<u>3,827,310</u>
	<u>\$ 10,674,779</u>	<u>\$ 9,521,436</u>

### Rate Stabilization Fund

The DEC Board of Directors established a Rate Stabilization Fund (RSF) in 2004. The RSF was established to pay for operating and maintenance expenses and extraordinary renewals, replacements, or repairs. Funds can be deposited or withdrawn with Board approval. The target for the RSF is 25 percent of the current year's budgeted energy expense. The Board approved transfers to the RSF of \$57,000 and \$50,000 in 2022 and 2021, respectively. The RSF transfers help make progress toward meeting the intended target.



# District Energy Corporation

## Notes to Financial Statements

December 31, 2022 and 2021

### Note 3: Financing Receivables

DEC has purchased and installed certain energy efficiency equipment for Lancaster County, Nebraska (the County) at the County Adult Detention Facility's (CADF) Thermal Energy Facility. The County maintains this equipment and is responsible for the costs of operation and maintenance of the equipment. Under an agreement between DEC and the County, DEC is being reimbursed by the County for the original cost of this equipment over the term of the related debt service, which matures September 1, 2030. The County makes monthly payments to DEC of \$12,330, which includes interest at a rate of 1.3 percent.

The minimum payments expected to be received from the County over the term of this agreement at December 31, 2022, are as follows:

<u>Year Ending December 31,</u>	<u>Principal</u>
2023	\$ 133,794
2024	135,553
2025	137,335
2026	139,141
2027	140,970
2028-2030	458,821
Total	<u>\$ 1,145,614</u>

DEC has financed certain energy efficiency projects for the building acquired by the State of Nebraska (the State), located at 1526 "L" Street, in Lincoln, Nebraska. The State maintains the building and is responsible for the costs of operation and maintenance of such improvements. The State is reimbursing DEC for the original cost of this project over the term of the related debt service, which matures July 1, 2024. The State makes monthly payments to DEC of \$8,997, which includes interest at a rate of 2.7 percent.

The minimum payments expected to be received from the State over the term of this agreement at December 31, 2022, are as follows:

<u>Year Ending December 31,</u>	<u>Principal</u>
2023	\$ 104,955
2024	55,807
Total	<u>\$ 160,762</u>

# District Energy Corporation

## Notes to Financial Statements

### December 31, 2022 and 2021

#### Note 4: Utility Plant

Utility plant activity for the years ended December 31, 2022 and 2021 was as follows:

2022					
	January 1,	Increases	Decreases	Transfers	December 31,
Construction work in progress (not depreciated)	\$ 4,331,175	\$ 1,508,656	\$ -	\$ (4,197,759)	\$ 1,642,072
Utility Plant	84,332,723	-	-	4,197,759	88,530,482
Less: Accumulated depreciation	(24,506,919)	(3,411,023)	-	-	(27,917,942)
Totals	<u>\$ 64,156,979</u>	<u>\$ (1,902,367)</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 62,254,612</u>

2021					
	January 1,	Increases	Decreases	Transfers	December 31,
Construction work in progress (not depreciated)	\$ 3,837,083	\$ 932,471	\$ -	\$ (438,379)	\$ 4,331,175
Utility Plant	84,405,756	-	(511,412)	438,379	84,332,723
Less: Accumulated depreciation	(21,717,919)	(3,300,412)	511,412	-	(24,506,919)
Totals	<u>\$ 66,524,920</u>	<u>\$ (2,367,941)</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 64,156,979</u>

# District Energy Corporation

## Notes to Financial Statements

### December 31, 2022 and 2021

#### Note 5: Long-term Debt

Long-term debt consisted of the following at December 31, 2022 and 2021:

	<u>Date Callable</u>	<u>2022</u>	<u>2021</u>
Revenue Bonds			
Series Bonds			
Series 2021A facility revenue refunding bonds, 5.00%, due annually through July 1, 2032	2031	22,215,000	24,210,000
Series 2021B facility revenue refunding bonds, 0.26% to 2.19%, due annually through July 1, 2031	N/A	6,385,000	7,145,000
Series 2021 NSP facility revenue bonds, 5.00%, due annually through July 1, 2040	2031	11,825,000	12,220,000
Term Bonds			
Series 2021A facility revenue refunding bonds, 2.00%, due July 1, 2036	N/A	1,280,000	1,280,000
Series 2021A facility revenue refunding bonds, 2.25%, due July 1, 2040	N/A	1,380,000	1,380,000
Series 2021A facility revenue refunding bonds, 2.375%, due July 1, 2043	N/A	400,000	400,000
Series 2021B facility revenue refunding bonds, 2.39%, due July 1, 2036	N/A	3,830,000	3,830,000
Series 2021B facility revenue refunding bonds, 3.02%, due July 1, 2043	N/A	6,275,000	6,275,000
Series 2021 NSP facility revenue bonds, 4.00%, due July 1, 2045	2031	5,480,000	5,480,000
Total Revenue Bonds		<u>59,070,000</u>	<u>62,220,000</u>

#### **Revenue and Refunding Bonds**

The 2010B Bond Series was issued as “Build America Bonds” (BABs) under the provisions of the American Recovery and Reinvestment Act of 2009. The BABs program provides for a cash subsidy payment from the United States Treasury equal to 29.3 percent of the interest payable on BABs in 2021. On April 1, 2021, DEC defeased the 2010B Bond Series, voiding their eligibility in the BABs program, and the final subsidy payment was received on June 6, 2021.

All revenues (after payment of operations and maintenance expenses) of DEC are pledged to secure the revenue bonds. Proceeds from all bonds issued are used to finance capital construction costs.

# District Energy Corporation

## Notes to Financial Statements

December 31, 2022 and 2021

Bond reserves are set in accordance with terms stated upon issuance. All reserves are fully funded.

In 2021, DEC defeased a total of \$27,165,000 of revenue bonds, including \$10,405,000 of 2010B Series and \$16,760,000 of 2013 Series. On April 1, 2021, DEC issued \$63,445,000 of Revenue Bonds in three series. The Series 2021A Facility Revenue Refunding Bonds with a principal amount of \$27,875,000, the Taxable Series 2021B Facility Revenue Refunding Bonds with a principal amount of \$17,870,000 and the Series 2021 NSP Facility Revenue Bonds with a principal amount of \$17,700,000. The refinancing of all of DEC's existing bonds resulted in a total debt service payment reduction of approximately \$3.8 million and a net present value debt service savings of approximately \$2.3 million for DEC customers.

### ***Line of Credit***

DEC has entered into a \$5,000,000 line of credit with J.P. Morgan Chase Bank, N.A to provide short-term liquidity as well as interim financing for current and future capital investments. The line of credit agreement allows for both tax-exempt and taxable borrowings. Tax-exempt borrowings on this line bear interest at 80 percent of the one-month LIBOR rate, plus an additional contractually agreed-upon spread. Taxable borrowings bear interest at 100 percent of the one-month LIBOR rate, plus an additional contractually agreed-upon spread. Interest is payable monthly and principal is due upon the expiration of the agreement, which is August 19, 2024. At the time of this report, DEC is working on an amendment to the current agreement to replace the LIBOR rate with the SOFR rate. The amendment is expected to be approved by the Board of Directors in April 2023. The amount outstanding under the line of credit was \$1,200,000 and \$0 as of December 31, 2022 and 2021, respectively.

### ***Note Payable – Direct Borrowing***

During 2019, DEC entered into an agreement with LES to migrate business processes to the SAP Enterprise Software to create operational and administrative efficiencies. Costs incurred totaled \$555,423 and are included within other noncurrent assets on the balance sheets. Under the agreement, costs incurred in relation to this migration were financed by LES at an interest rate equivalent to LES' weighted average cost of capital, which was 2.44% and 2.46% for 2022 and 2021, respectively. Monthly principal and interest payments of \$18,482 began in January 2020 and continued through August 2022, at which time the financed amount was paid in full. The outstanding balance as of December 31, 2022 and 2021 was \$0 and \$131,688, respectively.

# District Energy Corporation

## Notes to Financial Statements

### December 31, 2022 and 2021

The debt activities and balances at December 31, 2022 and 2021 were as follows:

	January 1, 2022	Additions	Reduction	December 31, 2022	Due Within One Year
Revenue bonds	\$ 62,220,000	\$ -	\$ (3,150,000)	\$ 59,070,000	\$ 3,290,000
Bond issuance premiums	8,906,950	-	(1,122,114)	7,784,836	-
Line of credit	-	1,200,000	-	1,200,000	-
Note payable - direct borrowing	131,688	-	(131,688)	-	-
Totals	<u>\$ 71,258,638</u>	<u>\$ 1,200,000</u>	<u>\$ (4,403,802)</u>	<u>\$ 68,054,836</u>	<u>\$ 3,290,000</u>

	January 1, 2021	Additions	Reduction	December 31, 2021	Due Within One Year
Revenue bonds	\$ 27,165,000	\$ 63,445,000	\$ (28,390,000)	\$ 62,220,000	\$ 3,150,000
Bond issuance premiums	229,102	9,783,139	(1,105,291)	8,906,950	-
Line of credit	46,750,000	-	(46,750,000)	-	-
Note payable - direct borrowing	347,337	-	(215,649)	131,688	131,688
Totals	<u>\$ 74,491,439</u>	<u>\$ 73,228,139</u>	<u>\$ (76,460,940)</u>	<u>\$ 71,258,638</u>	<u>\$ 3,281,688</u>

Debt service requirements including sinking fund requirements for DEC's revenue bonds as of December 31, 2022, were as follows:

Bond Year Ending July 31,	Principal	Interest	Total
2023	\$ 3,290,000	\$ 2,359,334	\$ 5,649,334
2024	3,405,000	2,229,948	5,634,948
2025	3,430,000	2,093,128	5,523,128
2026	3,585,000	1,947,896	5,532,896
2027	3,730,000	1,793,972	5,523,972
2028-2032	17,190,000	6,432,033	23,622,033
2033-2037	9,300,000	3,773,156	13,073,156
2038-2042	10,605,000	1,989,444	12,594,444
2043-2045	4,535,000	310,002	4,845,002
Total	<u>\$ 59,070,000</u>	<u>\$ 22,928,913</u>	<u>\$ 81,998,913</u>

#### Note 6: Related Party Transactions

The Board of Directors, under an amended and restated 5-year management agreement, has appointed LES to supervise and manage the system and business affairs of DEC. The management agreement is effective for five years beginning April 18, 2019 and thereafter remains in effect for successive five-year terms unless and until either party provides notice of non-renewal at least one year prior to the end of the then current term. In addition, either party has the right, with twenty-four-month notice, to terminate the

# **District Energy Corporation**

## **Notes to Financial Statements**

**December 31, 2022 and 2021**

agreement any time after DEC is free of indebtedness. LES is reimbursed for these management services based on the allocated actual cost of services provided. LES also provides electric energy to DEC in accordance with LES electric rate schedules. The total payments to LES for management, operations and maintenance services were approximately \$2,203,000 and \$2,194,000 in 2022 and 2021, respectively. The total payments to LES for electric service were approximately \$888,000 and \$889,000 in 2022 and 2021, respectively. DEC fulfilled its repayment obligation for the SAP Project with payments to LES of approximately \$151,000 and \$222,000 in 2022 and 2021, respectively. Accounts payable to LES were approximately \$204,000 or 26 percent and \$179,000 or 30 percent of the total accounts payable balance at December 31, 2022 and 2021, respectively.

DEC has entered into service agreements with the City of Lincoln, Lancaster County, State of Nebraska, West Haymarket Joint Public Agency, Lincoln Electric System and Nebraska Department of Corrections to provide heating and cooling services. These agreements expire when all debt associated with property and equipment is paid and can then be renewed on a year-to-year basis by agreement between both parties. The agreements can be terminated with a one- to two-year advance notice by either party.

All of DEC's heating and cooling service revenues were generated from six customers in 2022: The State of Nebraska, City of Lincoln, Lancaster County, West Haymarket Joint Public Agency, Lincoln Electric System and the Nebraska Department of Corrections.

### **Note 7: Risk Management**

DEC is exposed to various risks of loss related to general liability and property. DEC carries commercially available insurance, subject to certain limits and deductions, to reduce the financial impact of claims arising from such matters. Claims have not exceeded this coverage in any of the three preceding years.

### **Note 8: Segment Information**

DEC has issued revenue bonds to finance capital projects for the Nebraska State Penitentiary. Summary financial information for this facility for the years ended December 31, 2022 and 2021 are presented as follows:



# District Energy Corporation

## Notes to Financial Statements

December 31, 2022 and 2021

### CONDENSED BALANCE SHEET

	2022	2021
<b>Assets</b>		
Current Assets	\$ 1,752,449	\$ 1,560,520
Noncurrent Assets	771,958	808,834
Capital Assets	20,008,850	20,689,750
Total Assets	<u>\$ 22,533,257</u>	<u>\$ 23,059,104</u>
<b>Liabilities</b>		
Current Liabilities	\$ 989,811	\$ 943,083
Noncurrent Liabilities	20,676,568	21,379,444
Total Liabilities	21,666,379	22,322,527
<b>Net Position</b>		
Net Investment in Capital Assets	(1,673,701)	(467,898)
Restricted for Debt Service	1,473,694	197,686
Unrestricted	1,066,885	1,006,789
Total Net Position	866,878	736,577
Total Liabilities and Net Position	<u>\$ 22,533,257</u>	<u>\$ 23,059,104</u>

### CONDENSED STATEMENT OF REVENUES, EXPENSES, AND CHANGE IN NET POSITION

	2022	2021
Operating Revenues	\$ 2,670,930	\$ 2,522,578
Operating Expenses	2,011,279	1,925,696
Operating Income	659,651	596,882
Interest Expense	(548,849)	(547,560)
Other Non-Operating Revenues	19,499	779
Total Non-Operating Expenses	(529,350)	(546,781)
Change in Net Position	130,301	50,101
Net Position - Beginning of Year	736,577	686,476
Net Position - End of Year	<u>\$ 866,878</u>	<u>\$ 736,577</u>

### CONDENSED STATEMENT OF CASH FLOWS

	2022	2021
Cash Flows from Operating Activities	\$ 1,706,083	\$ 1,176,957
Cash Flows from Capital and Related Financing Activities	(1,293,981)	(828,914)
Cash Flows from Investing Activities	787,788	(1,023,742)
Net Change in Cash and Cash Equivalents	1,199,890	(675,699)
Cash and Cash Equivalents - Beginning of Year	596,291	1,271,990
Cash and Cash Equivalents - End of Year	<u>\$ 1,796,181</u>	<u>\$ 596,291</u>

# TAB VII

## **DISTRICT ENERGY CORPORATION**

### **RESOLUTION NO. 23-01**

#### **RESOLUTION AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF DOCUMENTS RELATING TO THE MODIFICATION OF A LINE OF CREDIT FOR THE BENEFIT OF DISTRICT ENERGY CORPORATION; TAKING OTHER ACTION IN CONNECTION WITH THE FOREGOING; AND RELATED MATTERS.**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF DISTRICT ENERGY CORPORATION:

#### **FINDINGS AND DETERMINATIONS**

1. District Energy Corporation (“DEC”) is a public body corporate and politic duly organized and validly existing under and pursuant to (a) the laws of the State of Nebraska (the “State”), including, without limitation, the Interlocal Cooperation Act (Chapter 13, Article 8, Reissue Revised Statutes of Nebraska, as amended, the “Interlocal Act”), and (b) an Amended and Restated Interlocal Cooperation Agreement dated December 21, 2020 (the “Interlocal Agreement”) between The City of Lincoln, Nebraska (the “City”) and The County of Lancaster, Nebraska (the “County”) for the purpose of providing for purchasing, leasing, constructing and financing facilities and the acquisition of services in order to furnish energy requirements and related services to the City and the County and to such other persons and entities as the City and the County may be authorized by law to serve. The Lincoln Electric System (“LES”) assigns a Management Contractor and other personnel to supervise, operate and manage the facilities and the business affairs of DEC pursuant to that certain “Management Agreement” between LES and DEC, as such agreement may be amended from time to time.

2. DEC is authorized, pursuant to the Interlocal Act and the Interlocal Agreement, to make contracts and incur liabilities, borrow money at such rates of interest as DEC may determine, issue its notes, bonds and other obligations and secure any of its obligations by mortgage or pledge of all of its property, franchises and income.

3. DEC has adopted Resolution No. 10-4-G, passed by the Board on March 11, 2010, as amended (the “General Resolution”) to govern the terms and conditions under which DEC may issue bonds, notes, and other evidences of indebtedness.

4. DEC determined that it was in the best interest of DEC, in order to provide short-term financing for capital improvements, to authorize the Management Contractor to negotiate, execute and deliver, on behalf of DEC, an agreement with JP Morgan Chase Bank, N.A. (the “Bank”) providing for a revolving line of credit or similar agreement (as entered into in accordance with the terms hereof and as amended from time to time, the “Credit Agreement”) and to borrow moneys pursuant to the terms of such Credit Agreement.

5. DEC has adopted Resolution No. 15-06, passed by the Board on October 20, 2015 (the “Credit Agreement Resolution”) authorizing the Management Contractor to negotiate, execute and deliver the Credit Agreement with the Bank.

6. DEC entered into that certain Credit Agreement, dated as of December 9, 2015 (the “Original Credit Agreement”), with DNT Asset Trust, a wholly owned subsidiary of the Bank.

7. DEC has adopted Resolution No. 17-16, passed by the Board on July 18, 2017, Resolution No. 17-19, passed by the Board on October 17, 2017, Resolution No. 20-09, passed by the Board on July 21, 2020 and Resolution No. 21-08, passed by the Board on July 20, 2021 authorizing amendments to the Original Credit Agreement to, among other certain changes, extend the term and amend the maximum principal amount available under the Original Credit Agreement.

8. DEC entered into that certain First Amendment to Credit Agreement dated October 26, 2017, that certain Second Amendment to Credit Agreement dated September 29, 2020, and that certain Amended and Restated Credit Agreement dated August 19, 2021 (the Original Credit Agreement, as so amended, the “Existing Credit Agreement”), with DNT Asset Trust, a wholly owned subsidiary of the Bank.

9. DEC has determined that it is in the best interest of DEC: (a) to modify the terms of the Existing Credit Agreement to provide for replacement benchmark provisions as a result of the pending cessation of the London Interbank Offer Rate (LIBOR) tenors and to make additional modifications therein reflective of the terms of such benchmark replacement, and (b) to authorize the Management Contractor to negotiate, execute and deliver, on behalf of DEC, amendments to or a restatement of the Existing Credit Agreement providing for such modifications (such amendment or restatement, the “Credit Agreement Amendment” and the Existing Credit Agreement, as amended or restated, the “Modified Credit Agreement”).

10. It is necessary, desirable, advisable and in the best interest of DEC that it adopt this Resolution to provide for the execution and delivery of the Credit Agreement Amendment with the Bank.

11. All conditions, acts and things required by law to exist or to be done precedent to the adoption of this Resolution providing for the execution and delivery of a Credit Agreement Amendment and for borrowings by DEC thereunder pursuant to the Interlocal Act and the Interlocal Agreement do exist and have been done and performed in regular and due form and time as provided by law.

## ARTICLE I

### DEFINITIONS AND STATUTORY AUTHORITY

**Section 1.01. Relationship to General Resolution.** This Resolution authorizes the execution of a Modified Credit Agreement as a Parity Instrument and designates payments due thereunder as Parity Obligations. Notwithstanding anything to the contrary herein, no Modified Credit Agreement shall be entered into hereunder except in compliance with Section 7.09 of the General Resolution.

**Section 1.02. Definitions.** (a) All terms which are defined in Section 1.01 of the General Resolution shall have the same meanings, respectively, in this Resolution as such terms are given in Section 1.01 of the General Resolution, except as such terms may be otherwise defined herein.

*“Management Contractor”* shall mean Jason Fortik, Vice-President of LES Power Supply Division, acting as agent of DEC as provided herein, and any duly appointed successor.

*“Tax Certificate”* shall mean any tax certificate entered into by and on behalf of DEC in connection with the Modified Credit Agreement or any draw thereunder, as such tax certificate may be amended from time to time.

**Section 1.03. Authority for this Resolution.** This Resolution is adopted pursuant to the provisions of the Interlocal Act.

## ARTICLE II

### AUTHORIZATION OF MODIFIED CREDIT AGREEMENT

**Section 2.01. Modified Credit Agreement as Parity Instrument.** Pursuant to the provisions of the General Resolution, the Modified Credit Agreement shall constitute a Parity Instrument and amounts due the Bank by DEC thereunder shall be Parity Obligations. Such Parity Instrument and Parity Obligations are entitled to the benefit, protection and security of the General Resolution.

**Section 2.02. Purpose.** The Management Contractor is hereby authorized, in accordance with the provisions of this Resolution and of the Modified Credit Agreement, to obtain advances under the Modified Credit Agreement for the benefit of DEC. Proceeds of each such advance shall be applied to the payment of Costs relating to the Energy Facilities in compliance with the provisions hereof and of any applicable Tax Certificate.

**Section 2.03. Tax and Other Covenants.**

(a) DEC covenants and agrees that (1) it will comply with all applicable provisions of the Code, including Sections 103 and 141 through 150, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on all advances made under the Modified Credit Agreement, and (2) it will not use or permit the use of any proceeds of any under the Modified Credit Agreement or any other funds of DEC nor take or permit any other action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on any advance under the Modified Credit Agreement which are issued as Tax-Exempt Obligations. DEC will, in addition, adopt such other resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on any advance under the Modified Credit Agreement issued as Tax-Exempt Obligations will remain excluded from federal gross income, to the extent any such actions can be taken by DEC.

(b) DEC covenants and agrees that (1) it will comply with all requirements of Section 148 of the Code to the extent applicable to any advance under the Modified Credit Agreement, (2) it will use the proceeds of any advance under the Modified Credit Agreement as soon as practicable and with all reasonable dispatch for the purposes for which such advance is requested, and (3) it will not invest or directly or indirectly use or permit the use of any proceeds of any advance under the Modified Credit Agreement or any other funds of DEC in any manner, or take or omit to take any action, that would cause any tax-exempt advance under the Modified Credit Agreement to be an arbitrage bond within the meaning of Section 148(a) of the Code.

(c) DEC covenants and agrees that it will pay or provide for the payment from time to time of all amounts required to be rebated to the United States pursuant to Section 148(f) of the Code and any Treasury Regulations applicable to any advance under the Modified Credit Agreement from time to time. This covenant shall survive payment in full or defeasance of any advance under the Modified Credit Agreement. DEC specifically covenants to pay or cause to be paid to the United States, the required amounts of arbitrage rebate at the times and in the amounts as determined by the Tax Certificate. Notwithstanding anything to the contrary contained herein, any Tax Certificate may be amended or replaced if, in the opinion of counsel nationally recognized on the subject of municipal bonds, such amendment or replacement will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any tax-exempt advance under the Modified Credit Agreement.

(d) DEC covenants and agrees that it will not use any portion of the proceeds of any tax-exempt advance under the Modified Credit Agreement, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any tax-exempt advance under the Modified Credit Agreement to be a “private activity bond.”

(e) The foregoing covenants shall remain in full force and effect notwithstanding the payment or defeasance of any advance under the Modified Credit Agreement until the termination of the Modified Credit Agreement.

### **ARTICLE III**

#### **PROVISIONS RELATED TO THE MODIFIED CREDIT AGREEMENT**

**Section 3.01. Terms of Modified Credit Agreement.** The Management Contractor is hereby authorized and directed to negotiate, execute and deliver the Modified Credit Agreement on behalf of DEC in substantially the form attached hereto as Exhibit A, with such additional modifications, agreements or additions as deemed necessary or appropriate by a DEC Officer as definitively evidenced by the Management Contractor’s execution of the Modified Credit Agreement, provided that the total advances under the Modified Credit Agreement shall not exceed \$5,000,000. The authority of the Management Contractor to enter into the Modified Credit Agreement pursuant to this Resolution shall terminate on June 30, 2023, if the Modified Credit Agreement is not entered into prior to such date.

### **Section 3.02. Ratification of Prior Actions; General and Specific Authorizations.**

(a) All actions heretofore taken by DEC, by the Management Contractor and by all other officers, officials, employees and agents of DEC, including without limitation the expenditure of funds, and the selection, appointment and employment of accountants, financial advisors and bond counsel, in connection with negotiation, execution and delivery of the Modified Credit Agreement, together with all other actions taken in connection with any of the matters which are the subject hereof, be and the same is hereby in all respects authorized, adopted, specified, accepted, ratified, approved and confirmed.

(b) Without in any way limiting the power, authority or discretion elsewhere in this Resolution granted or delegated, the Board hereby (1) authorizes and directs the Management Contractor, DEC counsel, and all other officers, officials, employees and agents of DEC to carry out or cause to be carried out, and to perform such obligations of DEC and such other actions as they, or any of them, in consultation with bond counsel, shall consider necessary, advisable, desirable or appropriate in connection with this Resolution and the negotiation, execution, delivery and performance (including, without limitation, requesting advances thereunder) of the Modified Credit Agreement, including subsequent amendments or supplements thereto, including without limitation the execution, delivery and performance of all related documents, instruments, certifications and opinions, and (2) delegates to the Management Contractor, as agent of DEC, the right, power and authority to exercise his or her own independent judgment and absolute discretion in (A) determining and finalizing all other terms and provisions to be set forth and agreed in the Modified Credit Agreement or any other instrument relating thereto not specifically set forth in this Resolution, and (B) the taking of all actions and the making of all arrangements necessary, proper, appropriate, advisable or desirable in order to effectuate the negotiation, execution, delivery and performance (including, without limitation, requesting advances thereunder) of the Modified Credit Agreement, including subsequent amendments or supplements thereto and the performance of DEC's obligations thereunder. Without limiting the generality of the foregoing, but for the avoidance of doubt, this Resolution authorizes the Management Contractor to negotiate, execute and deliver amendments and supplements to the Modified Credit Agreement to, among other things, further extend the term thereof. The execution and delivery by the Management Contractor of any such documents, instruments, certifications and opinions, or the performance by the Management Contractor or any other officer, official, employee or agent of any act in connection with any of the matters which are the subject of this Resolution, of the Modified Credit Agreement, and of each of the other documents referred to herein, shall constitute conclusive evidence of both DEC's and their approval of the terms, provisions and contents thereof and all changes, modifications, amendments, revisions and alterations made therein and shall conclusively establish their absolute, unconditional and irrevocable authority with respect thereto from DEC and the authorization, approval and ratification by DEC of the documents, instruments, certifications and opinions so executed and the actions so taken.

**Section 3.03. Tax Compliance Policy and Procedures.** The Board hereby approves, ratifies and confirms, in all respects, the Corporation's previously adopted Tax-Exempt Financing Compliance Procedures.



## ARTICLE IV

### MISCELLANEOUS

**Section 4.01. Headings, Table of Contents.** The headings of sections of this Resolution, and any table of contents attached to copies hereof, are set forth therein or are attached to such copies solely for convenience of reference only and shall not affect the construction or interpretation of this Resolution or of any section hereof.

**Section 4.02. Effectiveness of Resolution.** This Resolution shall take effect and be in force from and after its passage as provided by law.

**Section 4.03. Effect on Credit Agreement.** If no Credit Agreement Amendment is negotiated, executed and delivered pursuant to this Resolution and, consequently, no Modified Credit Agreement exists, nothing herein shall be deemed to effect the terms of the Credit Agreement Resolution or to limit, modify, restrict or alter the obligations of the Corporation under and pursuant to the Existing Credit Agreement.

[Remainder of Page Intentionally Left Blank]

DISTRICT ENERGY CORPORATION

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Adopted:

[Signature Page to Resolution No. 23-01

# TAB VIII

## **EXHIBIT A**

### **FORM OF MODIFIED CREDIT AGREEMENT**

**ANNEX I TO FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT**

---

AMENDED AND RESTATED CREDIT AGREEMENT

dated as of August 19, 2021

by and between

DISTRICT ENERGY CORPORATION

and

DNT ASSET TRUST,  
A WHOLLY OWNED SUBSIDIARY OF JPMORGAN CHASE BANK,  
NATIONAL ASSOCIATION

## TABLE OF CONTENTS

SECTION	HEADING	PAGE
ARTICLE I	DEFINITIONS .....	1
Section 1.1.	Definitions.....	1
Section 1.2.	Accounting Terms and Determinations .....	19
Section 1.3.	Interpretation.....	19
Section 1.4.	Times of Day.....	20
Section 1.5.	Relation to Other Documents; Acknowledgment of Different Provisions of Related Documents; Incorporation by Reference.....	20
Section 1.6.	Benchmark Notification.....	20
ARTICLE II	FACILITIES; APPLICATION AND ISSUANCE OF THE LOANS; PAYMENTS.....	21
Section 2.1.	Commitment .....	21
Section 2.2.	Borrowings; Making of Advances; Use of Proceeds .....	21
Section 2.3.	Conditions Precedent; Conditions Precedent to Effective Date .....	22
Section 2.4.	Interest Rate Determinations.....	25
Section 2.5.	Fees .....	25
Section 2.6.	Reduction .....	25
Section 2.7.	Termination.....	26
Section 2.8.	Funding Indemnity.....	26
Section 2.9.	Payments .....	26
Section 2.10.	Extension of the Commitment Expiration Date.....	26
Section 2.11.	Absence of Term SOFR Rate .....	27
ARTICLE III	LOANS .....	29
Section 3.1.	Making of Loans .....	29
Section 3.2.	Loans Evidenced by the Notes.....	29
Section 3.3.	Interest on Loans.....	29
Section 3.4.	Repayment of Loans .....	30
Section 3.5.	Prepayment of Loans .....	30
ARTICLE IV	LIABILITY, INDEMNITY AND PAYMENT .....	30
Section 4.1.	Indemnification .....	30
Section 4.2.	Increased Costs .....	31
Section 4.3.	Taxes .....	33
Section 4.4.	Calculation of Interest and Fees; Maximum Interest Rate; Default Rate .....	35
Section 4.5.	Limitation on Liability .....	35
Section 4.6.	Security; Source of Repayment .....	35
Section 4.7.	Survival .....	36
ARTICLE V	REPRESENTATIONS AND WARRANTIES.....	36

Section 5.1.	Representations and Warranties.....	36
Section 5.2.	Survival of Representations and Warranties.....	40
ARTICLE VI	AFFIRMATIVE COVENANTS OF DEC .....	40
Section 6.1.	Affirmative Covenants of DEC .....	40
ARTICLE VII	NEGATIVE COVENANTS OF DEC.....	44
Section 7.1.	Negative Covenants of DEC.....	44
ARTICLE VIII	DEFAULTS AND REMEDIES .....	46
Section 8.1.	Events of Default .....	46
Section 8.2.	Rights and Remedies upon Default.....	48
Section 8.3.	Rights and Remedies Cumulative; Non-Waiver; etc .....	49
Section 8.4.	Crediting of Payments and Proceeds .....	49
ARTICLE IX	MISCELLANEOUS .....	50
Section 9.1.	Evidence of Debt.....	50
Section 9.2.	Amendments and Waivers .....	50
Section 9.3.	Addresses for Notices .....	50
Section 9.4.	Survival of This Agreement.....	51
Section 9.5.	Severability .....	52
Section 9.6.	Governing Law; Waiver of Jury Trial .....	52
Section 9.7.	Successors and Assigns; Participations; Certain Pledges .....	52
Section 9.8.	Setoffs .....	53
Section 9.9.	Counterparts; Electronic Signatures .....	53
Section 9.10.	Patriot Act .....	54
Section 9.11.	No Fiduciary Relationship .....	54
Section 9.12.	Acknowledgement Regarding Any Supported QFCs .....	54
EXHIBIT A	— Form of Note	
EXHIBIT B	— Form of Request for Advance	
EXHIBIT C	— Form of Notice of Termination or Reduction	



## AMENDED AND RESTATED CREDIT AGREEMENT

This AMENDED AND RESTATED CREDIT AGREEMENT, dated as of August 19, 2021, is entered into by and between DISTRICT ENERGY CORPORATION, a public body corporate and politic of the State of Nebraska, and DNT ASSET TRUST, a wholly owned subsidiary of JPMorgan Chase Bank, National Association.

### RECITALS

WHEREAS, the Lender and DEC previously executed a Credit Agreement dated as of December 9, 2015, as previously amended by the First Amendment to Credit Agreement dated October 27, 2017 and the Second Amendment to Credit Agreement dated September 20, 2020 (collectively, the “*Prior Agreement*”), pursuant to which the Lender agreed to provide tax-exempt loans to DEC in an amount not-to-exceed \$50,000,000 (the “*Prior Commitment*”) to provide a source of funds for the purposes set forth in the Act and the Authorizing Resolution; and

WHEREAS, the Lender and DEC have agreed to amend and restate the Prior Agreement to, among other reasons, (i) provide for DEC to borrow taxable loans in addition to tax-exempt loans, (ii) reduce the Prior Commitment amount to \$5,000,000 rather than pursuant to Exhibit C of the Prior Agreement, and (iii) make certain other changes to the Prior Agreement; and

WHEREAS, all obligations of DEC to repay the Lender for loans made by the Lender pursuant to this Agreement and to pay all other amounts payable to the Lender arising under or pursuant to this Agreement or the Notes to be issued to the Lender hereunder are created under the Authorizing Resolution, this Agreement and the Note, will be evidenced by this Agreement and the Notes and will be secured by a pledge of and lien on the Net Revenues, all in accordance with, and to the extent provided by, the terms and conditions of the Authorizing Resolution and this Agreement;

NOW, THEREFORE, in consideration of the foregoing Recitals and other consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce the Lender to make loans to DEC, DEC and the Lender hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

*Section 1.1. Definitions.* As used in this Agreement, including the recitals hereto, the following terms shall have the following meanings:

“*Act*” means the Interlocal Cooperation Act, Chapter 13, Article 8 of the Revised Statutes of Nebraska, as amended.

“*Adjusted Term SOFR Rate*” means, for any Interest Period, an interest rate per annum equal to (a) the Term SOFR Rate for such Interest Period, plus (b) 0.10%; *provided* that if the

Adjusted Term SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be the Floor for the purposes of this Agreement.

*“Advance”* means each Loan requested by DEC and made by the Lender pursuant to the terms hereof.

*“Advance Date”* means the date on which an Advance is made by the Lender to DEC.

*“Affiliate”* means, as to any Person, a corporation, partnership, association, agency, authority, instrumentality, joint venture, business trust or similar entity organized under the laws of any state that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.

*“Agreement”* means this Credit Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time.

*“Amendment Date”* means [\_\_\_\_], 2023.

*“Ancillary Document”* has the meaning assigned to it in Section 9.9.

*“Anti-Corruption Laws”* means all laws, rules and regulations of any jurisdiction applicable to DEC from time to time concerning or relating to bribery or corruption.

*“Applicable Law”* means (a) all applicable common law and principles of equity and (b) all applicable provisions of all (i) constitutions, statutes, rules, regulations and orders of all governmental and non-governmental bodies, (ii) Governmental Approvals and (iii) orders, decisions, judgments and decrees of all courts (whether at law or in equity) and arbitrators.

*“Applicable Margin”* has the meaning set forth in the Fee Agreement.

*“Applicable Tax-Exempt Margin”* has the meaning set forth in the Fee Agreement.

*“Applicable Taxable Margin”* has the meaning set forth in the Fee Agreement.

*“Authorized Representative”* has the meaning set forth in the Authorizing Resolution, and includes, but is not limited to, the Management Contractor (as defined in the Authorizing Resolution).

*“Authorizing Resolution”* means Resolution No. 10-4-G of DEC, adopted on March 11, 2010, as amended and supplemented from time to time, including as supplemented by Resolution No. 15-06, Resolution No. 17-16, Resolution No. 17-19, Resolution No. 20-19, Resolution No. 21-01 and Resolution No. 21-08.

*“Available Commitment”* means, on any date, an initial amount equal to \$5,000,000 and thereafter such initial amount adjusted from time to time as follows: (a) downward in an amount equal to any Advance or any Loan in respect of such Advance made to DEC under the Tax-Exempt

Loan Commitment and/or the Taxable Loan Commitment, as applicable; (b) upward in an amount equal to the principal amount of any Loan under the Tax-Exempt Loan Commitment and/or the Taxable Loan Commitment, as applicable, that is repaid or prepaid in the manner provided herein; (c) downward in an amount equal to any reduction thereof effected pursuant to Section 2.6 or 8.2(c) hereof; and (d) downward to zero upon the expiration or termination of the Available Commitment in accordance with the terms hereof; *provided*, that, after giving effect to any of the foregoing adjustments the Available Commitment shall never exceed \$5,000,000 at any one time.

*“Available Tenor”* means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments of interest calculated pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (e) of Section 2.11.

*“Bank Agreement”* means any credit agreement, bond purchase agreement, liquidity agreement or other agreement or instrument (or any amendment, supplemental or modification thereto) entered into by DEC with any Person, directly or indirectly, or otherwise consented to by DEC, under which any Person or Persons undertakes to make loans or extend credit or liquidity to DEC in connection with, or purchase on a private placement basis, any Debt secured by or payable from the Net Revenues.

*“Bankruptcy Code”* means the federal Bankruptcy Code of 1978, as it may be amended from time to time (Title 11 of the United States Code), and any successor statute thereto.

*“Basel III”* means “Basel III - A Global Regulatory Framework for More Resilient Banks and Banking Systems, December 2010” and “Basel III - International Framework for Liquidity Risk Measurement Standards and Monitoring, December 2010” promulgated by the Basel Committee on Banking Supervision, as the same may be amended and supplemented from time to time.

*“Base Rate”* has the meaning set forth in the Fee Agreement.

*“Benchmark”* means, initially, with respect to any Loan, the Term SOFR Rate; *provided* that if a Benchmark Transition Event, and the related Benchmark Replacement Date have occurred with respect to the Term SOFR Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of Section 2.11.

*“Benchmark Replacement”* means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Lender for the applicable Benchmark Replacement Date;

(1) the Daily Simple SOFR plus 0.10%;

- (2) the sum of: (a) the alternate benchmark rate that has been selected by the Lender and DEC as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment;

If the Benchmark Replacement as determined pursuant to the above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

*“Benchmark Replacement Adjustment”* means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Lender and DEC for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities at such time.

*“Benchmark Replacement Conforming Changes”* means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Lender decides may be appropriate in its reasonable discretion to reflect the adoption and implementation of such Benchmark and to permit the administration thereof by the Lender in a manner substantially consistent with market practice (or, if the Lender decides that adoption of any portion of such market practice is not administratively feasible or if the Lender determines that no market practice for the administration of such Benchmark exists, in such other manner of administration as the Lender decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

*“Benchmark Replacement Date”* means, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Transition Event*” means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, the CME Term SOFR Administrator, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof)

announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Unavailability Period*” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.11 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.11.

“*BHC Act Affiliate*” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“*Bond Counsel*” means Kutak Rock LLP, or such other counsel of recognized national standing in the field of law relating to municipal bonds and the exemption from federal income taxation of interest thereon, appointed and paid by DEC.

“*Bonds*” has the meaning set forth in the Authorizing Resolution.

“*Business Day*” means, any day (other than a Saturday or a Sunday) on which banks are open for business in New York City or Chicago.

“*Change in Law*” means the occurrence, after the Effective Date, of any of the following: (a) the adoption or taking effect of any Law, including, without limitation, any Risk-Based Capital Guidelines, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, ruling, guideline, regulation or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, ruling, guidelines, regulations or directives thereunder or issued in connection therewith and (ii) all requests, rules, rulings, guidelines, regulations or directives promulgated by the Lender for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“*CME Term SOFR Administrator*” means CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR) (or a successor administrator).

“*Code*” means the Internal Revenue Code of 1986, as amended, and, where appropriate, any statutory predecessor or any successor thereto.

“*Commitment*” means the commitment on the Effective Date of \$5,000,000, as such amount may be modified from time to time pursuant to the terms hereof.

“*Commitment Expiration Date*” means August 19, 2024, unless extended as provided herein.

“*Commitment Fee*” has the meaning set forth in the Fee Agreement.

“*Commitment Fee Rate*” has the meaning set forth in the Fee Agreement.

“*Computation Date*” means, with respect to Term SOFR Rate, the second New York Banking Day preceding each applicable Rate Reset Date.

“*Controlled Group*” means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with DEC, are treated as a single employer under Section 414 of the Code.

“*Costs*” has the meaning set forth in the Authorizing Resolution.

“*Corresponding Tenor*” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“*Covered Entity*” means any of the following:

(i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“*Covered Party*” has the meaning assigned to it in Section 9.12.

“*Daily Simple SOFR*” means, for any day (a “*SOFR Rate Day*”), a rate per annum equal to SOFR for the day (such day “*SOFR Determination Date*”) that is five (5) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is an U.S. Government Securities Business Days, such SOFR Rate Day or (ii) if such SOFR Rate Day is not an U.S. Government Securities Business Days, the U.S. Government Securities Business Days immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by SOFR Administrator on SOFR



Administrator's Website. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to DEC.

*"Debt"* of any Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business (including, without limitation, accounts payable to construction contractors and other professionals for services rendered), (d) all obligations of such Person as lessee under capital leases, (e) all Debt of others secured by a Lien on any asset of such Person, whether or not such Debt is assumed by such Person (excluding, however, economic development revenue bonds issued by such Person and other nonrecourse indebtedness of such Person), (f) all Debt of others guaranteed by such Person and (g) all obligations of such Person under any Swap Contract, in each case, whether such Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss.

*"Debtor Relief Laws"* means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

*"DEC"* means District Energy Corporation and its successors and permitted assigns.

*"Default"* means any event or condition which, with notice, the passage of time or any combination of the foregoing, would constitute an Event of Default.

*"Default Rate"* means, with respect to any Loan, (i) through the last day of the applicable Interest Period, the sum of the applicable Term SOFR Rate, plus the Applicable Margin, plus three percent (3%) per annum, and (ii) thereafter, the rate per annum equal to the greater of (x) the sum of the Base Rate, plus the Applicable Margin, plus three percent (3%) per annum, and (y) 10.5% per annum.

*"Default Right"* has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

*"Determination of Taxability"* means and shall be deemed to have occurred on the earliest of:

(a) the date when DEC files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have in fact occurred;

(b) the date that is one hundred eighty (180) days after the date on which the Lender notifies DEC that it has received a written opinion by a nationally recognized firm of attorneys of substantial expertise on the subject of tax-exempt municipal finance to the effect that an Event of Taxability has occurred unless, on or prior to that date, such firm of

attorneys shall have withdrawn its opinion that an Event of Taxability has occurred, or, DEC shall deliver to the Lender a ruling or determination letter issued to or on behalf of DEC by the Commissioner or any District Director of the Internal Revenue Service (or any other governmental official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability has not occurred;

(c) the date when DEC shall be advised in writing by the Commissioner or any District Director of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from time to time) that based upon filings of DEC (or a statutory notice of deficiency, or a document of substantially similar import), or upon any review or audit of DEC, or upon any other ground whatsoever, an Event of Taxability shall have occurred; or

(d) the date when DEC shall receive notice from the Lender that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of the Lender or any Participant the interest on any Loan due to the occurrence of an Event of Taxability;

*provided, however*, no Determination of Taxability shall occur under subparagraph (c) or (d) above unless DEC has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined after taking into account any permitted appeals; *provided further, however*, that upon demand from the Lender, DEC shall promptly reimburse the Lender for any payments, including any taxes, interest, penalties or other charges, that the Lender shall be obligated to make as a result of the Determination of Taxability.

“Dollar” and “\$” mean lawful money of the United States.

“Effective Date” means August 19, 2021, subject to the satisfaction or waiver by the Lender of the conditions precedent set forth in Section 2.3(a) hereof.

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“Energy Facilities” has the meaning set forth in the Authorizing Resolution.

“Energy Service Agreements” means, collectively, (a) the Thermal Service Agreement dated June 15, 1991 among DEC, the County of Lancaster, Nebraska, and the City of Lincoln, Nebraska; (b) the Amended and Restated Thermal Service Agreement dated February 15, 2012, between DEC and The State of Nebraska; (c) the Energy Service Agreement dated January 1, 2010, between DEC and the County of Lancaster; (d) the Energy Service Agreement dated October 6, 2011, as amended, between DEC and the West Haymarket Joint Public Agency; and

(e) the Energy Service Agreement dated October 18, 2016, between DEC and the City of Lincoln d/b/a Lincoln Electric System.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time. References to Sections of ERISA shall be construed also to refer to any successor Sections.

“*Event of Default*” with respect to this Agreement has the meaning set forth in Section 8.1 hereof and, with respect to any other Related Document, has the meaning assigned therein.

“*Event of Taxability*” means (a) a change in Law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by DEC, or the failure to take any action by DEC, or the making by DEC of any misrepresentation herein or in any certificate required to be given in connection with this Agreement or the making of any Tax-Exempt Loan) which has the effect of causing interest paid or payable on any Tax-Exempt Loan to become includable, in whole or in part, in the gross income of the Lender or any Participant for federal income tax purposes or (b) the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable procedural law, in either case, which has the effect of causing interest paid or payable on any Tax-Exempt Loan (or the Tax-Exempt Note evidencing such Tax-Exempt Loan) to become includable, in whole or in part, in the gross income of the Lender or any Participant for federal income tax purposes.

“*Excess Interest Amount*” has the meaning set forth in Section 4.4(b) hereof.

“*Excluded Taxes*” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such Recipient is organized or in which its principal office is located; (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which DEC is located; (c) taxes or withholding imposed under FATCA; and (d) any taxes imposed as a result of the Recipient’s failure to apply for and receive any legally available exemption from tax or withholding.

“*FATCA*” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

“*Federal Reserve Board*” means the Board of Governors of the Federal Reserve System of the United States of America.

*“Fee Agreement”* means the Amended and Restated Fee Agreement, dated as of August 19, 2021, by and between DEC and the Lender and as the same may be amended, restated, supplemented or otherwise modified from time to time pursuant thereto and hereto.

*“Fiscal Year”* means the period commencing on January 1 of each given calendar year and ending on December 31 of the immediately succeeding calendar year, or such similar period as DEC may designate as its fiscal year.

*“Fitch”* means Fitch Ratings, Inc., and any successor rating agency.

*“Floor”* means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Adjusted Term SOFR Rate. For the avoidance of doubt, the initial Floor for the Adjusted Term SOFR Rate shall be 0.00%.

*“Generally Accepted Accounting Principles”* or *“GAAP”* means generally accepted accounting principles in effect from time to time in the United States and applicable to entities such as DEC.

*“Governmental Approval”* means an authorization, consent, approval, license, or exemption of, registration or filing with, or report to any Governmental Authority.

*“Governmental Authority”* means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

*“Indemnitee”* has the meaning set forth in Section 4.1(a) hereof.

*“Indemnified Taxes”* means Taxes other than Excluded Taxes.

*“Interest Payment Date”* means (a) with respect to any Base Rate Loan, first day of each calendar month (and if such day is not a New York Banking Day, the next succeeding New York Banking Day) and the Termination Date and (b) with respect to any Term SOFR Loan, the last day of each Interest Period applicable to the borrowing of which such Loan is a part and, in the case of a Term SOFR Loan with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period, and the Termination Date.

*“Interest Period”* means the period from and including the date any Loan is made to but excluding the next succeeding Rate Reset Date, and thereafter shall mean the period from and including such Rate Reset Date to but excluding the next succeeding Rate Reset Date.

*“Investment Policy”* means the investment policy of DEC delivered to the Lender pursuant to Section 2.3(a)(xviii) hereof.

*“ISDA Definitions”* means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

*“Law”* means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

*“Lender”* means DNT Asset Trust, a wholly owned subsidiary of JPMorgan Chase Bank, National Association, and its successors and assigns.

*“Lender Affiliate”* means the Lender and any Affiliate of the Lender.

*“Lien”* means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset. For the purposes of this Agreement, a Person shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

*“Loan”* or *“Loans”* means individually, each Advance made pursuant to Section 3.1 hereof.

*“Loan Documents”* means this Agreement, including schedules and exhibits hereto, the Related Documents, and any agreements entered into in connection herewith by DEC with or in favor of the Lender, including any amendments, modifications or supplements thereto or waivers thereof, and any other documents prepared in connection with the other Loan Documents, if any.

*“Material Adverse Effect”* means: (a) a material impairment of the ability of DEC to perform its obligations under this Agreement, the Notes, the Tax Certificate or the Authorizing Resolution, (b) a material adverse effect upon the legality, validity, binding effect or enforceability against DEC of any of this Agreement, the Notes, the Tax Certificate or the Authorizing Resolution or the rights and remedies of the Lender hereunder, or (c) a material adverse change in, or material adverse effect upon, the operations, business, property, liabilities or financial condition of DEC.

*“Maximum Rate”* means the maximum non-usurious interest rate payable by DEC under applicable law.

*“Moody’s”* means Moody’s Investors Service, Inc. and any successor rating agency.

*“Net Revenues”* has the meaning set forth in the Authorizing Resolution.

*“New York Banking Day”* means any day (other than a Saturday or Sunday) on which commercial banks are open for business in New York, New York.

*“1933 Act”* means the Securities Act of 1933, as amended.

*“Note”* and *“Notes”* each has the meaning given that term in Section 3.2 as of the Effective Date, means the note evidencing the Loans dated as of the Effective Date, it being acknowledged by the Lender and DEC that any Advance outstanding under the Prior Agreement under the Prior Note prior to the Effective Date shall, from and after the Effective Date, be evidenced by the Tax-Exempt Note and subject to the Prior Fee Agreement.

*“Noteholder”* means the holder or owner of the Notes.

*“NYFRB”* means the Federal Reserve Bank of New York.

*“NYFRB’s Website”* means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

*“NYFRB Rate”* means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding New York Banking Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a New York Banking Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Lender from three Federal funds brokers of recognized standing selected by it; *provided*, that, if the NYFRB Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

*“Obligations”* means all Reimbursement Obligations, all fees, expenses and charges payable or reimbursable to the Lender (including, without limitation, any amounts to reimburse the Lender for any advances or expenditures by it under any of such documents) under this Agreement and under the Fee Agreement and all other payment obligations of DEC to the Lender arising under or in relation to this Agreement, the Fee Agreement or the other Related Documents, in each, case whether now existing or hereafter arising, due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired.

*“Parity Instrument”* has the meaning set forth in the Authorizing Resolution.

*“Parity Obligations”* has the meaning set forth in the Authorizing Resolution.

*“Participant”* means any entity to which the Lender has granted a participation in the obligations of the Lender hereunder and of DEC hereunder and under the Notes.

*“Patriot Act”* has the meaning set forth in Section 9.10 hereof.

*“Person”* means any individual, corporation, not for profit corporation, partnership, limited liability company, joint venture, association, professional association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other form of entity.

*“Plan”* means, with respect to DEC at any time, an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code and either (a) is maintained, or has within the preceding five plan years been maintained, by a member of the Controlled Group for employees of a member of the Controlled Group of which DEC is a part, (b) is maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and to which a member of the Controlled Group of which DEC is a part is then making or accruing an obligation to make contributions or has within the preceding five plan years made contributions.

*“Prime Rate”* means, at any time, the rate of interest per annum publicly announced from time to time by the Lender as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day such change in such prime rate occurs. The parties hereto acknowledge that the rate announced publicly by the Lender as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

*“Prior Agreement”* has the meaning set forth in the recitals hereto.

*“Prior Fee Agreement”* means the Fee Agreement executed in connection with the Prior Agreement, as amended and supplemented.

*“Prior Note”* means the tax-exempt note executed in connection with the Prior Agreement, as amended and supplemented.

*“Property”* means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired, including, but not limited to, the Energy Facilities.

*“QFC”* has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

*“QFC Credit Support”* has the meaning assigned to it in Section 9.12.

*“Rate Reset Date”* means each date on which the interest rate borne by any Loan shall be reset hereunder, and with respect to any Loan, shall mean the period commencing on the date of such borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (in each case, subject to the availability for the Benchmark applicable to the relevant Loan or Commitment), as DEC may elect; *provided*, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Term SOFR Rate borrowing only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period

pertaining to a Term SOFR Rate borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (iii) no tenor that has been removed from this definition pursuant to Section 2.11(e) shall be available for specification in such borrowing request or interest election request.

*“Rating Agency”* means Moody’s, S&P and/or Fitch as context may require.

*“Rating Documentation”* has the meaning set forth in Section 2.3(b)(v) hereof.

*“Recipient”* means the Lender, any Participant or any Noteholder.

*“Reference Time”* with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the Term SOFR Rate, 5:00 a.m. (Chicago time) on the day that is two (2) Business Days preceding the date of such setting.

*“Reimbursement Obligations”* means the obligations of DEC under this Agreement to repay all Loans, together with interest thereon, pursuant to and in accordance with this Agreement.

*“Related Documents”* means this Agreement, the Notes, the Fee Agreement, the Tax Certificate, the Authorizing Resolution, any documents related to any of the foregoing or executed in connection therewith, and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing.

*“Related Parties”* means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

*“Relevant Governmental Body”* means with respect to a Benchmark Replacement, the Federal Reserve Board and/or the NYFRB, the CME Term SOFR Administrator, as applicable, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

*“Resolution No. 15-06”* means Resolution No. 15-06 of DEC adopted on October 20, 2015, authorizing this Agreement as a Parity Instrument and the Obligations hereunder as Parity Obligations, respectively.

*“Request for Advance”* has the meaning assigned to it in Section 2.2(a)(i).

*“Resolution No. 17-16”* means Resolution No. 17-16 of DEC adopted on July 18, 2017, authorizing the First Amendment.

*“Resolution No. 17-19”* means Resolution No. 17-19 of DEC adopted on October 17, 2017, authorizing the First Amendment.



*“Resolution No. 20-09”* means Resolution No. 20-09 of DEC adopted on July 21, 2020, authorizing the Second Amendment.

*“Resolution No. 21-08”* means Resolution No. 21-08 of DEC adopted on July 20, 2021, authorizing this Agreement.

*“Revenues”* has the meaning set forth in the Authorizing Resolution.

*“Risk-Based Capital Guidelines”* means (a) the risk-based capital guidelines in effect in the United States on the Effective Date, including transition rules, and (b) the corresponding capital regulations promulgated by regulatory authorities outside the United States including transition rules, and any amendments to such regulations adopted prior to the Effective Date.

*“S&P”* means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and any successor rating agency.

*“Sanctioned Country”* means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (as of the Amendment Date, the so-called Donetsk People’s Republic, the so-called Luhansk People’s Republic, the Crimea, Zaporizhzhia and Kherson Regions of Ukraine, Cuba, Iran, North Korea and Syria).

*“Sanctioned Person”* means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the United Nations Security Council, the European Union or any European Union member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

*“Sanctions”* means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom.

*“Second Amended and Restated Fee Agreement”* means the Second Amended and Restated Fee Agreement, dated as of the Amendment Date, by and between DEC and the Lender and as the same may be amended, restated, supplemented or otherwise modified from time to time pursuant thereto and hereto.

*“SOFR”* means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

*“SOFR Administrator”* means the NYFRB (or a successor administrator of the secured overnight financing rate).

“*SOFR Administrator’s Website*” means the NYFRB’s website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“*SOFR Determination Date*” has the meaning specified in the definition of “Daily Simple SOFR”.

“*SOFR Rate Day*” has the meaning specified in the definition of “Daily Simple SOFR”.

“*State*” means the State of Nebraska.

“*Swap Contract*” means (a) any and all rate swap transactions, total return swaps, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“*Tax Certificate*” has the meaning set forth in the Authorizing Resolution.

“*Tax-Exempt Loan*” means each Loan designated by DEC as a “Tax-Exempt Loan” in the Borrowing Notice requesting such Loan.

“*Tax-Exempt Loan Commitment*” means, on any date, an initial amount equal to the Commitment and thereafter such initial amount adjusted from time to time as follows: (a) downward in an amount equal to any Advance or any Loan in respect of such Advance made to DEC under the Tax-Exempt Loan Commitment and/or the Taxable Loan Commitment, as applicable; (b) upward in an amount equal to the principal amount of any Loan under the Tax-Exempt Loan Commitment and/or the Taxable Loan Commitment, as applicable, that is repaid or prepaid in the manner provided herein; (c) downward in an amount equal to any reduction thereof effected pursuant to Section 2.6 or Section 8.2(ii) hereof; and (d) downward to zero upon the expiration or termination of the Available Commitment in accordance with the terms hereof; *provided*, that, after giving effect to any of the foregoing adjustments the Tax-Exempt Loan Commitment shall never exceed \$5,000,000 at any one time.

“*Tax-Exempt Note*” has the meaning given that term in Section 3.2.

“*Taxable Loan*” means any Loan bearing interest at the Taxable Rate.

*“Taxable Loan Commitment”* means, on any date, an initial amount equal to the Commitment and thereafter such initial amount adjusted from time to time as follows: (a) downward in an amount equal to any Advance or any Loan in respect of such Advance made to DEC under the Tax-Exempt Loan Commitment and/or the Taxable Loan Commitment, as applicable; (b) upward in an amount equal to the principal amount of any Loan under the Tax-Exempt Loan Commitment and/or the Taxable Loan Commitment, as applicable, that is repaid or prepaid in the manner provided herein; (c) downward in an amount equal to any reduction thereof effected pursuant to Section 2.6 or Section 8.2(ii) hereof; and (d) downward to zero upon the expiration or termination of the Available Commitment in accordance with the terms hereof; *provided*, that, after giving effect to any of the foregoing adjustments the Taxable Loan Commitment shall never exceed \$5,000,000 at any one time.

*“Taxable Note”* has the meaning given that term in Section 3.2.

*“Taxable Period”* has the meaning set forth in Section 4.2(e) hereof.

*“Taxable Rate”* has the meaning set forth in the Fee Agreement.

*“Taxes”* means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, fines, additions to tax or penalties applicable thereto.

*“Term SOFR Determination Day”* has the meaning assigned to it under the definition of Term SOFR Reference Rate.

*“Term SOFR Rate”* means, with respect to any Loan or borrowing and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago time, two U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.

*“Term SOFR Reference Rate”* means, for any day and time (such day, the *“Term SOFR Determination Day”*), with respect to any Term SOFR Rate borrowing denominated in Dollars and for any tenor comparable to the applicable Interest Period, the rate per annum published by the CME Term SOFR Administrator and identified by the Lender as the forward-looking term rate based on SOFR. If by 5:00 pm (New York City time) on such Term SOFR Determination Day, the *“Term SOFR Reference Rate”* for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then, so long as such day is otherwise a U.S. Government Securities Business Day, the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long as such first preceding U.S. Government Securities Business Day is not more than five (5) U.S. Government Securities Business Days prior to such Term SOFR Determination Day.

*“Termination Date”* means the earliest of (a) the Commitment Expiration Date, as such date may be extended pursuant to Section 2.9 hereof, (b) the date on which the Available Commitment is otherwise terminated or reduced to zero in accordance with Section 2.6 hereof and (c) the date the Available Commitment terminates by its terms in accordance with Section 8.2 hereof.

*“Termination Fee”* has the meaning set forth in the Fee Agreement.

*“U.S. Government Securities Business Day”* means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

*“U.S. Special Resolution Regime”* has the meaning assigned to it in Section 9.12.

*“Unadjusted Benchmark Replacement”* means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

*“United States”* or *“U.S.”* means the United States of America.

*Section 1.2. Accounting Terms and Determinations.* Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP. If, after the Effective Date, there shall occur any change in GAAP from those used in the preparation of the financial statements referred to in Section 5.1(j) hereof and such change shall result in a change in the method of calculation of any financial covenant, standard or term found in this Agreement including, without limitation, a recharacterization of operating leases to the effect that certain operating leases are to be treated as capital leases, either DEC or the Lender may, by notice to the other party hereto, require that the Lender and DEC negotiate in good faith to amend such covenants, standards, and terms so as equitably to reflect such change in accounting principles, with the desired result being that the criteria for evaluating the financial condition of DEC shall be the same as if such change had not been made. No delay by DEC or the Lender in requiring such negotiation shall limit their right to so require such a negotiation at any time after such a change in accounting principles. Until any such covenant, standard, or term is amended in accordance with this Section 1.2, financial covenants shall be computed and determined in accordance with GAAP in effect prior to such change in accounting principles.

*Section 1.3. Interpretation.* The following rules shall apply to the construction of this Agreement unless the context requires otherwise: (a) the singular includes the plural, and the plural the singular; (b) words importing any gender include the other gender; (c) references to statutes are to be construed as including all statutory provisions consolidating and amending, and all regulations promulgated pursuant to, such statutes; (d) references to “writing” include printing, photocopy, typing, lithography and other means of reproducing words in a tangible visible font; (e) the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation”; (f) references to the introductory paragraph, recitals, articles, sections (or

clauses or subdivisions of sections), exhibits, appendices, annexes or schedules are to those of this Agreement unless otherwise indicated; (g) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent that such amendments and other modifications are permitted or not prohibited by the terms of this Agreement; (h) Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose; (i) references to Persons include their respective permitted successors and assigns; and (j) in the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding.” All references to “funds” herein shall include all accounts and subaccounts therein unless the context clearly requires otherwise.

*Section 1.4. Times of Day.* Unless otherwise specified, all references herein to times of day shall be references to New York time (daylight or standard, as applicable).

*Section 1.5. Relation to Other Documents; Acknowledgment of Different Provisions of Related Documents; Incorporation by Reference.* (a) Nothing in this Agreement shall be deemed to amend, or relieve DEC of its obligations under, any Related Document to which it is a party. Conversely, to the extent that the provisions of any Related Document allow DEC to take certain actions, or not to take certain actions, with regard for example to permitted liens, transfers of assets, maintenance of financial ratios and similar matters, DEC nevertheless shall be fully bound by the provisions of this Agreement.

(b) Except as provided in paragraph (c) of this Section 1.5, all references to other documents shall be deemed to include all amendments, modifications and supplements thereto to the extent such amendment, modification or supplement is made in accordance with the provisions of such document and this Agreement.

(c) All provisions of this Agreement making reference to specific Sections of any Related Document shall be deemed to incorporate such Sections into this Agreement by reference as though specifically set forth herein (with such changes and modifications as may be herein provided) and shall continue in full force and effect with respect to this Agreement notwithstanding payment of all amounts due under or secured by the Related Documents, the termination or defeasance thereof or any amendment thereto or any waiver given in connection therewith, so long as this Agreement is in effect and until all Obligations are paid in full. No amendment, modification, consent, waiver or termination with respect to any of such Sections shall be effective as to this Agreement until specifically agreed to in writing by the parties hereto with specific reference to this Agreement.

*Section 1.6. Benchmark Notification.* The interest rate on Loans may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. In the event a Benchmark Transition Event occurs, Section 2.11 of this Agreement provides a mechanism for determining an alternative rate of interest. The Lender will notify DEC, pursuant to Section 2.11, in advance of any change to the reference rate upon which the interest rate of the Loans is based. The Lender does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance

or any other matter related to any interest rate used in this Agreement, or with respect to any alternative or successor rate thereto, or replacement rate thereof, including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the existing interest rate being replaced or have the same volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability. The Lender and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to DEC. The Lender may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to DEC, the Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

## **ARTICLE II**

### **FACILITIES; APPLICATION AND ISSUANCE OF THE LOANS; PAYMENTS**

*Section 2.1. Commitment.* Subject to the terms and conditions hereof, the Lender, by its acceptance hereof, agrees to make a loan or loans in U.S. Dollars to DEC from time to time in an aggregate principal amount that will not result in the sum of the total Loans outstanding exceeding the Available Commitment, subject to any reductions thereof pursuant to the terms hereof before the Termination Date. The sum of the aggregate principal amount of Tax-Exempt Loans and Taxable Loans at any time outstanding shall not exceed the Commitment in effect at such time. The Available Commitment shall terminate on the Commitment Expiration Date. As provided in Section 2.3(c), DEC may elect that any such Loan be either a Tax-Exempt Loan pursuant to the Tax-Exempt Loan Commitment or a Taxable Loan pursuant to the Taxable Loan Commitment.

*Section 2.2. Borrowings; Making of Advances; Use of Proceeds.* Subject to the terms and conditions of this Agreement, the Lender agrees to make Advances from time to time on any New York Banking Day, commencing on the Effective Date and ending on the Termination Date, in amounts not to exceed at any time the Commitment available hereunder; *provided, however*, that the Lender shall not be required to make more than three (3) Advances during any calendar month. The aggregate amount of all Advances bearing interest at a Tax-Exempt Rate made on any Advance Date shall not exceed the applicable Tax-Exempt Loan Commitment (calculated without giving effect to any Advances made on such date). The aggregate amount of all Advances bearing interest at a Taxable Rate made on any Advance Date shall not exceed the applicable Taxable Loan Commitment (calculated without giving effect to any Advances made on such date).

(a) *Method of Borrowing; Reallocation of Commitments.*

(i) *Requests for Advances.* When requesting Advances in the form of Loans, DEC shall give the Lender irrevocable prior written notice of its intention to borrow substantially in the form of Exhibit B (a “*Request for Advance*”) not later than 11:00 a.m. two (2) New York Banking Days before each Advance Date. Such notice in each case shall specify (i) the Advance Date, which shall be a New York Banking Day, (ii) the amount of such borrowing, which shall be in accordance with this Section 2.2, (iii) the sum of the total Loans outstanding (which shall not exceed the Commitment), and (iv) whether such Loan shall be a Tax-Exempt Loan or a Taxable Loan. A Request for Advance received after 11:00 a.m. shall be deemed received on the next New York Banking Day. Pursuant to Section 3.3 hereof, the Lender shall determine the initial interest rate applicable to such Advance.

(ii) *Disbursement of Advances.* Not later than 1:00 p.m. on the proposed Advance Date, the Lender shall disburse the proceeds of the Advance requested pursuant to this Section in immediately available funds by crediting or wiring such proceeds to the deposit account of DEC identified in the related Request for Advance or as may be otherwise agreed upon by DEC and the Lender from time to time.

*Section 2.3. Conditions Precedent; Conditions Precedent to Effective Date.* The obligations of the Lender to make the Commitment available hereunder shall be subject to the fulfillment of each of the following conditions precedent on or before the Effective Date in a manner satisfactory to the Lender:

(a) The Lender shall have received the following documents, each dated and in form and substance as is satisfactory to the Lender:

(i) an original fully executed copy of this Agreement;

(ii) an original fully executed copy of the Fee Agreement;

(iii) copies of the Authorizing Resolution and any other resolution(s) of DEC approving the execution and delivery of this Agreement and the Notes, certified by an Authorized Representative as being true and complete and in full force and effect on the Effective Date;

(iv) certified copies of all approvals, authorizations and consents of any trustee, or holder of any indebtedness or obligation of DEC or any Governmental Authority necessary for DEC to enter into each of the Related Documents and the transactions contemplated herein and therein;

(v) a certificate of an Authorized Representative dated the Effective Date certifying as to the authority, incumbency and specimen signatures of the designated representatives of DEC authorized to sign this Agreement, the Fee Agreement and the Notes and any other documents to be delivered by it hereunder

and who will be authorized to represent DEC in connection with this Agreement, upon which the Lender may rely until it receives a new such certificate;

(vi) a certificate of an Authorized Representative certifying (i) that there has been no event or circumstance since December 31, 2020 that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (ii) that the representations and warranties contained in Article V hereof and in the other Related Documents are true and correct in all material respects on the Effective Date, and (iii) no event has occurred and is continuing, or would result from entry into this Agreement, which would constitute a Default or Event of Default, and (iv) to the best of DEC's knowledge on and as of the Closing Date, there is no default under any Energy Service Agreement nor is there any condition or circumstance that would impair the ability of DEC or the other parties to the Energy Service Agreements to perform thereunder;

(vii) the original executed Notes;

(viii) an executed original or certified copy, as applicable, of each of the Related Documents not otherwise specified in this Section 2.3(a);

(ix) an IRS Form W-9 duly completed by DEC;

(x) a certified copy of the Amended and Restated Interlocal Cooperation Agreement;

(xi) a certified copy of the By-Laws of DEC;

(xii) [reserved];

(xiii) a copy of a summary of insurance coverage provided by DEC's insurance broker;

(xiv) a written description of all actions, suits or proceedings, if any, pending or threatened against DEC in any court or before any arbitrator of any kind or before or by any governmental or non-governmental body which could reasonably be expected to result in a Material Adverse Effect;

(xv) an opinion from counsel to DEC as to the due authorization, execution, delivery and enforceability of the Notes and other Related Documents to be delivered on the Effective Date, and such other customary matters as the Lender may reasonably request;

(xvi) a certified copy of the Investment Policy; and

(xvii) certified copies of the Energy Service Agreements.



(b) The following statements shall be true and correct on the date of this Amended and Restated Credit Agreement:

(i) The representations and warranties of DEC contained in each of the Related Documents and each certificate, letter, other writing or instrument delivered by DEC to the Lender pursuant hereto or thereto are true and correct on and as of the Effective Date as though made on and as of such date;

(ii) No Default or Event of Default has occurred and is continuing or would result from DEC's execution and delivery of this Agreement or the Note;

(iii) Since the release of the audited annual financial statements of DEC for its Fiscal Year ended December 31, 2020, no material adverse change has occurred in the financial condition of DEC;

(iv) The underlying unenhanced long-term ratings assigned to the Bonds by S&P and Fitch have not been reduced, withdrawn or suspended since the date of the Rating Documentation;

(v) The Lender shall have received a copy of the most recent published ratings from S&P and Fitch confirming that the underlying unenhanced long-term rating assigned to the Bonds by S&P is "AA+" and by Fitch is "AA+" (referred to herein as the "Rating Documentation");

(vi) On or prior to the Effective Date, the Lender shall have received reimbursement of the Lender's fees and expenses and any other fees incurred in connection with the transactions contemplated by this Agreement due on the Effective Date pursuant to the Fee Agreement; and

(vii) The Lender shall have received such other documents, certificates, opinions, approvals and filings with respect to this Agreement, the Notes and the other Related Documents as the Lender may reasonably request.

(c) *Conditions Precedent to Each Advance.* The obligation of the Lender to make an Advance on any date is subject to the conditions precedent that on the date of such Advance:

(i) The Lender shall have received a Request for Advance as provided in Section 2.2(a)(i) hereof for either a Tax-Exempt Loan or a Taxable Loan;

(ii) All representations and warranties of DEC as set forth in Article V hereof shall be true and correct as though made on the date of such Request for Advance and on the date of the proposed Advance, and on the date of such Request for Advance and on the date of the proposed Advance no Default or Event of Default shall have occurred and be continuing;

(iii) The Available Commitment and the obligation of the Lender to make an Advance hereunder shall not have terminated pursuant to Section 8.2 hereof or pursuant to Section 2.6 hereof;

(iv) After giving effect to such extension of credit, the aggregate principal amount of all Advances shall not exceed the Available Commitment; and

(v) The Lender shall be satisfied that the opinion of Bond Counsel delivered pursuant to the Prior Agreement remains in full force and effect or the Lender shall have received an opinion from Bond Counsel dated the date of such Advance as to the exclusion of interest on any Tax-Exempt Loans from gross income for federal income tax purposes, in form and substance satisfactory to the Lender.

Unless DEC shall have otherwise previously advised the Lender in writing, delivery to the Lender of a Request for Advance shall be deemed to constitute a representation and warranty by DEC that on the date of such Request for Advance and on the date of the proposed Advance all representations and warranties of DEC as set forth in Article V hereof are true and correct as though made on the date of such Request for Advance and on the date of the proposed Advance, and no Default or Event of Default shall have occurred and be continuing on the date of such Request for Advance or on the date of the proposed Advance.

*Section 2.4. Interest Rate Determinations.* The Lender shall promptly notify DEC of the Tax-Exempt Rate or the Taxable Rate applicable to any Loan upon determination of such interest rate; *provided, however*, that the failure by the Lender to provide notice of the applicable interest rate shall not relieve DEC of its obligation to make payment of amounts as and when due hereunder. Each determination by the Lender of an interest rate shall be conclusive and binding for all purposes, absent manifest error.

*Section 2.5. Fees.* DEC agrees to pay and perform its obligations provided for in the Fee Agreement, including, without limitation, the payment of any and all fees provided for therein on the dates and in the amounts set forth therein. All references to amounts or obligations due hereunder or under this Agreement shall be deemed to include all amounts and obligations (including, without limitation, fees and expenses) due under the Fee Agreement.

All amounts payable pursuant to this Agreement and the Fee Agreement are nonrefundable. If DEC shall fail to pay any amount payable under this Section 2.5 or the Fee Agreement as and when due, each such unpaid amount shall bear interest for each day from and including the date it was due until paid in full at the applicable Default Rate. The obligations of DEC under this Section 2.5 and the Fee Agreement shall survive the termination of this Agreement.

*Section 2.6. Reduction .* The Commitment shall be reduced from time to time as requested by DEC within three (3) days of DEC's written notice to the Lender in the form of Exhibit C hereto requesting such reduction; *provided*, that each such reduction amount shall be in an amount equal to \$1,000,000 and integral multiples of \$100,000 in excess thereof.

(a) Each permanent reduction permitted pursuant to this Section shall be accompanied by a payment of principal sufficient to reduce the aggregate outstanding after such reduction to the Commitment as so reduced. Any reduction of the Commitment to zero shall be accompanied by payment of all outstanding Loans and shall result in the termination of the Commitment. Any reduction of the Commitment that requires the repayment of any Loan shall be accompanied by any amount required to be paid pursuant to Section 2. hereof.

*Section 2.7. Termination.* DEC may at any time and at its sole option terminate the Commitment upon three (3) New York Banking Days' prior written notice to the Lender. As a condition to any such termination, DEC shall pay or cause to be paid to the Lender the Termination Fee, if any, in the amount set forth in the Fee Agreement and all other Obligations owed to the Lender.

*Section 2.8. Funding Indemnity.* In the event the Lender shall incur any loss, cost, or expense (including, without limitation, any loss, cost, or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired or contracted to be acquired by the Lender to make any Loan or the relending or reinvesting of such deposits or other funds or amounts paid or prepaid to the Lender) as a result of (i) any failure by DEC to borrow any Loan on any Advance Date following a Request for Advance for any reason, including, without limitation, any termination of the Commitment prior to the related Advance Date pursuant to the terms hereof, or (ii) any optional payment or prepayment of any Loan on a date other than the first New York Banking Day of a calendar month (subject to the notice requirements set forth in Section 3.5 hereof) for any reason, whether before or after Default, then upon the demand of the Lender, DEC shall pay to the Lender a premium in such amount as will reimburse the Lender for such loss, cost, or expense within thirty (30) days of delivery by the Lender of a certificate setting forth the computation of the loss, cost, or expense giving rise to the request for such payment or prepayment premium, as applicable, in reasonable detail and such certificate shall be conclusive if reasonably determined.

*Section 2.9. Payments.* Each payment by DEC on account of the principal of or interest on the Notes or the Loans or of any fee, commission or other amounts (including the Reimbursement Obligations) payable to the Lender under this Agreement and under the Fee Agreement shall be made not later than 1:00 p.m. on the date specified for payment under this Agreement or under the Fee Agreement to the Lender at the Lender's office in Dollars, in immediately available funds and shall be made without any set-off, counterclaim or deduction whatsoever. Any payment received after 1:00 p.m. shall be deemed to have been made on the next succeeding New York Banking Day for all purposes. If any payment under this Agreement or under the Fee Agreement shall be specified to be made upon a day which is not a New York Banking Day, it shall be made on the next succeeding day which is a New York Banking Day and such extension of time shall in such case be included in computing any interest if payable along with such payment.

*Section 2.10. Extension of the Commitment Expiration Date.* No more than one hundred twenty (120) days prior to the Commitment Expiration Date then in effect, DEC may request the

Lender in writing to extend the Commitment Expiration Date for purposes of this Agreement for a period to be agreed upon by DEC and the Lender. The Lender shall have thirty (30) days to respond to any request by DEC to extend the Commitment Expiration Date. Any decision by the Lender to extend the Commitment Expiration Date shall be in the Lender's sole discretion. If the Lender elects to extend the Commitment Expiration Date, the Lender will notify DEC of such extension and the conditions of such extension (including conditions relating to legal documentation and pricing, fees for such renewal and Advances). If the Lender does not notify DEC prior to thirtieth (30th) day following a request by DEC to the Lender to extend the Commitment Expiration Date, the Lender shall be deemed to have not consented to such request. The Lender may, in its sole discretion, accept or reject any proposed extensions.

*Section 2.11. Absence of Term SOFR Rate.* (a) If prior to the commencement of any Interest Period:

(i) the Lender shall determine (which determination shall be conclusive and binding absent fraud or manifest error) that Dollar deposits are not being offered to banks in the interbank market for the applicable amount of any Loan, or

(ii) the Lender determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining Adjusted Term SOFR Rate (including because Term SOFR Reference Rate is not available or published on a current basis), for such Interest Period; *provided* that, in the case of clause (i) or (ii) of this Section 2.11(a), no Benchmark Transition Event shall have occurred at such time; then the Lender shall give notice thereof to DEC by telephone, telecopy or electronic mail as promptly as practicable thereafter and, subject to clause (b) below, until the Lender notifies DEC that the circumstances giving rise to such notice no longer exist or the Alternate Rate is determined as provided below, Loans shall bear interest at the Base Rate.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, the Lender shall promptly notify DEC and the Lender and DEC may amend this Agreement in the following manner: The Lender shall propose in writing an alternate rate of interest to Adjusted Term SOFR Rate to DEC and DEC shall either accept or reject in writing the proposed alternate rate of interest within five (5) Business Days of receiving such proposed alternate rate of interest from the Lender. If DEC does not respond to such proposal within such five (5) Business Day period, it will be deemed to be a rejection of such proposed alternate rate of interest by DEC and the Benchmark Replacement will replace the Adjusted Term SOFR Rate for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document. In proposing and considering the proposed alternate rate of interest, the Lender and DEC, respectively, shall give due consideration to the then prevailing market convention for determining a rate of interest for bilateral credit facilities in the United States at such time and shall give consideration to the recommendations of the Alternative Reference Rates Committee. Upon reaching agreement on an alternate rate of interest (the "*Alternate Rate*"), such

Alternate Rate will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Alternate Rate is provided to the Lender without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document. If any Tax-Exempt Loans are outstanding at the time of any such amendment, such amendment shall be conditioned on delivery of an opinion of Bond Counsel to the effect that such amendment will not adversely effect the exclusion from gross income for federal income tax purposes of interest on such Tax-Exempt Loans. Until an alternate rate of interest shall be determined in accordance with this subsection (b), Loans shall bear interest at the Base Rate. At any time that the Alternate Rate is less than 0.00% the Alternate Rate shall be deemed to equal 0.00%.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, the Lender will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(d) The Lender will promptly notify DEC of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Lender pursuant to this Section 2.11, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.11.

(e) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Lender may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Lender may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Upon DEC's receipt of notice of the commencement of a Benchmark Unavailability Period, DEC may revoke any request for a Term SOFR Rate borrowing of, conversion to or continuation of Term SOFR Rate Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, either (x) DEC will be deemed to have converted any request for (1) a Term SOFR Rate borrowing into a request for a borrowing of or conversion to a Base Rate Loan. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate. Furthermore, if any Term SOFR Rate Loan is outstanding on the date of DEC's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Term SOFR Rate applicable to such Term SOFR Rate Loan, then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.11, any Term SOFR Rate Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Lender to, and shall constitute, a Base Rate Loan.

### ARTICLE III

#### LOANS

*Section 3.1. Making of Loans.* Each Advance shall constitute a Loan made by the Lender to DEC on the date of such Advance.

*Section 3.2. Loans Evidenced by the Notes.* The Tax-Exempt Loans shall be evidenced by a promissory note of DEC made in favor of the Lender in the form set forth in Exhibit A hereto (as amended or supplemented from time to time, the "*Tax-Exempt Note*"). The Taxable Loans shall be evidenced by a promissory note of DEC made in favor of the Lender in the form set forth in Exhibit A hereto (as amended or supplemented from time to time, the "*Taxable Note*;" the Taxable Note and the Tax-Exempt Note are collectively referred to herein as the "*Notes*," and individually as a "*Note*"). The Tax-Exempt Loans made by the Lender and all prepayments made on account of principal thereof shall be recorded by the Lender on the schedule (or a continuation thereof) attached to the Tax-Exempt Note, it being understood, however, that failure by the Lender to make any such endorsement shall not affect the obligations of DEC hereunder or under the Tax-Exempt Note in respect of unpaid principal and interest on the Tax-Exempt Loans. The Taxable Loans made by the Lender and all prepayments made on account of principal thereof shall be recorded by the Lender on the schedule (or a continuation thereof) attached to the Taxable Note, it being understood, however, that failure by the Lender to make any such endorsement shall not affect the obligations of DEC hereunder or under the Taxable Note in respect of unpaid principal and interest on the Taxable Loans. DEC shall maintain books of registry at its principal office and, in the event of any transfer of the Notes, shall register such transfers and issue new Notes in accordance with the terms of the Notes and the Related Documents.

*Section 3.3. Interest on Loans.* The initial Term SOFR Rate or the initial Term SOFR Rate for a particular Loan shall be determined by the Lender two New York Banking Days prior to the related Advance Date; *provided, however*, that, thereafter, the succeeding Term SOFR Rates,

as applicable, for any such Loan shall be determined by the Lender on the applicable Computation Date and shall become effective on the immediately succeeding Rate Reset Date. DEC and the Lender agree and acknowledge that for so long as the interest on a Tax-Exempt Loan remains tax-exempt and bears interest at the Term SOFR Rate, each Tax-Exempt Loan shall accrue interest at a rate per annum equal to eighty percent (80%) of the Adjusted Term SOFR Rate plus the Applicable Tax-Exempt Margin. DEC and the Lender further agree and acknowledge that interest on a Taxable Loan shall accrue interest at a rate per annum equal to one hundred percent (100%) of Adjusted Term SOFR Rate plus the Applicable Taxable Margin. Each applicable Term SOFR Rate shall be communicated in writing by the Lender to DEC. Interest on each Loan shall be computed on the unpaid principal amount thereof, on the basis of a year of 360 days and actual days elapsed, and shall be payable by DEC to the Lender in arrears on each Interest Payment Date; *provided, however*, that if the rate is determined on the basis of the Base Rate, the rate shall be calculated on the basis of a year of 365/366 days and actual days elapsed and shall accrue interest at a rate per annum equal to the Base Rate plus the Applicable Margin; and *provided further, however*, that during the occurrence of an Event of Default, the interest rate on such Loans shall equal the Default Rate and such Loans bearing interest at the Default Rate shall be payable on demand by the Lender and be calculated on the basis of a 365/366-day year and actual days elapsed.

*Section 3.4. Repayment of Loans.* The principal of each Loan shall be repaid by DEC in full on the Termination Date.

*Section 3.5. Prepayment of Loans.* DEC may prepay any Loan, in whole or in part, provided the payment is in minimum denominations of \$100,000 and integral multiples of \$100,000 in excess thereof; and on any date, provided at least three (3) New York Banking Days' written notice is provided by DEC to the Lender. Each such notice of optional or mandatory prepayment shall be irrevocable and shall bind DEC to make such prepayment in accordance with such notice. All prepayments of principal shall include accrued interest to the date of prepayment and all other amounts due pursuant to this Agreement, including, without limitation, Section 2.7 hereof.

## ARTICLE IV

### LIABILITY, INDEMNITY AND PAYMENT

#### *Section 4.1. Indemnification.*

(a) *Indemnification by DEC.* DEC shall indemnify the Lender and each Related Party of the Lender (each such Person being called an "*Indemnatee*") against, and hold each Indemnatee harmless from, and shall pay or reimburse any such Indemnatee for, any and all losses, claims (including, without limitation, any environmental claims), damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnatee), and shall indemnify and hold harmless each Indemnatee from, and shall pay or reimburse any such Indemnatee for, all reasonable fees and time charges and disbursements for attorneys who may be employees of any Indemnatee, incurred by any Indemnatee or asserted

against any Indemnitee by any Person, other than such Indemnitee and its Related Parties, arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Related Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) the Notes or any Loan or Advance or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of hazardous materials on or from any property owned or operated by DEC, or any environmental claim related in any way to DEC, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, and regardless of whether any Indemnitee is a party thereto, or (v) any claim, investigation, litigation or other proceeding (whether or not the Lender is a party thereto) and the prosecution and defense thereof, arising out of or in any way connected with the Notes, the Loans, this Agreement, any other Related Document, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby, including without limitation, reasonable attorneys and consultant's fees, *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses that are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(b) *Waiver of Consequential Damages, Etc.* To the fullest extent permitted by Applicable Law, DEC shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Related Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, the Notes, any Loan or Advance or the use of the proceeds thereof. No Indemnitee above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Related Documents or the transactions contemplated hereby or thereby.

(c) *Payments.* All amounts due under this Section shall be payable not later than thirty (30) days after demand therefor.

#### *Section 4.2. Increased Costs.*

(a) *Change in Law.* If the Lender shall determine that any Change in Law shall:

(i) impose, modify or deem applicable any reserve, liquidity ratio, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, or other acquisitions of funds by, the Lender, any Participant or any Noteholder;

(ii) subject any Recipient to any Tax of any kind whatsoever with respect to this Agreement, the Notes, the Advances, or the Loans or change the basis of taxation of payments to such Recipient in respect thereof;



(iii) impose upon any Recipient any other condition, cost or expense with respect to this Agreement, the Commitment, the Notes, the Advances, or the Loans;

and the result of any of the foregoing is to increase the cost to, reduce the income receivable by, or impose any expense (including loss of margin) upon such Recipient with respect to this Agreement, the Notes, the Advances, or the Loans (or in the case of any capital adequacy or similar requirement, to have the effect of reducing the rate of return on the such Recipient's capital),

then the Lender shall from time to time notify, or cause to be notified, DEC of the amount determined in good faith by such Recipient (which determination shall be conclusive absent manifest error) to be necessary to compensate such Recipient, for such increase, reduction or imposition.

(b) *Capital Requirements.* If a Recipient determines that any Change in Law affecting such Recipient, or its parent or holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on the capital of such Recipient or its parent or holding company, if any, as a consequence of this Agreement, or making, maintenance or funding of, any Loan hereunder, to a level below that which such Recipient, or its parent or holding company, if any, could have achieved but for such Change in Law (taking into consideration such Recipient's policies and the policies of its parent or holding company, if any, with respect to capital adequacy), then from time to time upon written request of the Lender as set forth in paragraph (c) of this Section, DEC shall promptly pay to such Recipient such additional amount or amounts as will compensate such Recipient, or its parent or holding company, if any, for any such reduction.

(c) *Certificates for Reimbursement.* A certificate of a Recipient setting forth the amount or amounts necessary to compensate such Recipient or its parent or holding company if any, as specified in paragraph (a) or (b) of this Section and delivered to DEC, shall be conclusive absent manifest error. Such amount shall be calculated without duplication of the payment of any Indemnified Taxes paid by DEC pursuant to Section 4.3 hereof. DEC shall pay such Recipient the amount shown as due on any such certificate within sixty (60) days after receipt thereof.

(d) *Delay in Requests.* Failure or delay on the part of a Recipient to demand compensation pursuant to this Section shall not constitute a waiver of the right to demand such compensation.

(e) *Event of Taxability.* (i) Upon the occurrence of an Event of Taxability, DEC hereby agrees to pay to the appropriate Recipient on demand therefor (1) an amount equal to the difference between (A) the amount of interest that would have been paid to such Recipient on any Tax-Exempt Loan during the period for which interest on such Tax-Exempt Loan is includable in the gross income of such Recipient, if such Tax-Exempt Loan had borne interest at the Taxable Rate, beginning on the Taxable Date (the "Taxable Period"), and (B) the amount of interest actually paid to such Recipient during the Taxable Period, and (2) an amount equal to any interest, penalties or charges owed by such Recipient as a result of interest on such Tax-Exempt Loan becoming includable in the gross income of such Recipient, together with any and all reasonable

attorneys' fees, court costs, or other out-of-pocket costs incurred by such Recipient in connection therewith.

(ii) Subject to the provisions of paragraph (iii) below, each Recipient shall afford DEC the opportunity, at DEC's sole cost and expense, to contest (1) the validity of any amendment to the Code which causes the interest on such Tax-Exempt Loan to be includable in the gross income of such Recipient or (2) any challenge to the validity of the tax exemption with respect to the interest on the Tax-Exempt Loans, including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals).

(iii) As a condition precedent to the exercise by DEC of its right to contest set forth in paragraph (ii) above, DEC shall, on demand, immediately reimburse each Recipient for any and all expenses (including reasonable attorneys' fees for services that may be required or desirable) that may be incurred by such Recipient in connection with any such contest, and shall, on demand, immediately reimburse such Recipient for any and all penalties or other charges payable by such Recipient for failure to include such interest in its gross income, *provided* that DEC shall not be obligated to reimburse any Recipient for any penalties or other charges arising from the gross negligence or willful misconduct of such Recipient.

#### *Section 4.3. Taxes.*

(a) *Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.* Any and all payments by or on account of any obligation of DEC under this Agreement or under the Fee Agreement shall be made free and clear of and without deduction or withholding for any Indemnified Taxes; *provided* that if DEC shall be required by Applicable Law to deduct any Indemnified Taxes from such payments, then (i) to the fullest extent permitted by Applicable Law, the sum payable to any Recipient shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section), such Recipient shall receive an amount equal to the sum it would have received had no such deductions been made, (ii) DEC shall make such deductions, and (iii) DEC shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law. If DEC shall make any payment under this Section 4.3(a) to or for the benefit of a Recipient with respect to Indemnified Taxes and if such Recipient shall claim any credit or deduction for such Indemnified Taxes against any other taxes payable by such Recipient then such Recipient shall pay to DEC an amount equal to the amount by which such other taxes are actually reduced; *provided*, that the aggregate amount payable by such Recipient pursuant to this sentence shall not exceed the aggregate amount previously paid by DEC with respect to such Indemnified Taxes.

(b) *Indemnification by DEC.* DEC shall indemnify each Recipient, within thirty (30) days after demand therefor, for the full amount of any Indemnified Taxes paid by such Recipient, together with reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority, *provided* that DEC shall not be obligated to indemnify such Recipient for any Taxes, penalties, interest, or expenses arising from such Recipient's gross negligence or willful misconduct. Each Recipient shall give notice to DEC of the assertion of any claim against such Recipient relating to such Indemnified Taxes as promptly as is practicable after being notified of

such assertion; *provided*, that such Recipient's failure to notify DEC promptly of such assertion shall not relieve DEC of its obligations under this Section. DEC shall be entitled, at its option and at its expense, to contest any such Indemnified Taxes, and each Recipient shall cooperate with DEC (at the expense of DEC) in contesting such Indemnified Taxes. A certificate stating the amount of such payment or liability delivered to DEC by the Lender shall be conclusive absent manifest error.

(c) *Evidence of Payments.* As soon as practicable after any payment of Indemnified Taxes by DEC to a Governmental Authority, DEC shall deliver to the applicable Recipient the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to such Recipient.

(d) *Treatment of Certain Refunds.* If a Recipient has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including additional amounts paid by DEC pursuant to this Section), it shall pay to DEC an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, under this Section with respect to the Taxes giving rise to such refund), without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Notwithstanding anything to the contrary in this paragraph (c), in no event will such Recipient be required to pay any amount to DEC pursuant to this paragraph (c) the payment of which would place such Recipient in a less favorable net after-tax position than such Recipient would have been in if the indemnification payments or additional amounts giving rise to such refund had not been paid. This paragraph shall not be construed to require such Recipient to make available its tax returns (or any other information relating to its taxes which it deems confidential) to DEC or any other Person.

(e) *Tax Documentation.* (i) If a Recipient is entitled to an exemption from or reduction of withholding Taxes with respect to payments made hereunder or under any Related Document, such Recipient shall deliver to DEC and the Lender at the time or times reasonably requested by DEC or the Lender, such properly completed and executed documentation reasonably requested by DEC or as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, such Recipient, if reasonably requested by DEC, shall deliver such other documentation prescribed by applicable Law or reasonably requested by DEC as will enable DEC to determine whether or not such Recipient is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 4.3(e)(ii) below) shall not be required if, in such Recipient's reasonable judgment, such completion, execution or submission would subject such Recipient to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Recipient.

(ii) Each Recipient shall deliver to DEC (and from time to time thereafter upon the reasonable request of DEC), executed originals of IRS Form W-9 certifying that such Recipient is exempt from U.S. federal backup withholding tax.

*Section 4.4. Calculation of Interest and Fees; Maximum Interest Rate; Default Rate.* Except as otherwise provided herein, interest on any Loans and on fees payable under this Agreement or under the Fee Agreement shall be calculated on the basis of a year of 360 days based on the actual number of days elapsed.

(a) Any and all amounts remaining unpaid when due under this Agreement or under the Fee Agreement shall bear interest at the Default Rate until repaid and shall be payable upon demand. Any such amounts which constitute interest remaining unpaid when due shall be added to principal, and such interest shall, in turn, bear interest at the Default Rate until repaid and shall be payable upon demand. Upon the occurrence and during the continuance of an Event of Default, the Obligations shall bear interest at the Default Rate, which shall be payable by DEC to the Lender upon demand therefor and be calculated on the basis of a 365/366-day year and actual days elapsed.

(b) In the event that the rate of interest payable hereunder shall exceed the Maximum Rate for any period for which interest is payable, then (i) interest at the Maximum Rate shall be due and payable with respect to such interest period, and (ii) interest at the rate equal to the difference between (1) the rate of interest calculated in accordance with the terms hereof and (2) the Maximum Rate (the "Excess Interest Amount") shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Maximum Rate, at which time DEC shall pay to the Lender such portion of the deferred Excess Interest Amount as will cause the rate of interest then paid to the Lender to equal the Maximum Rate, which payments of deferred Excess Interest Amount shall continue to apply to such unpaid amounts hereunder until all deferred Excess Interest Amount is fully paid to the Lender. Notwithstanding the foregoing, on the date on which no principal amount with respect to the Loans remains unpaid, DEC shall pay to the Lender a fee equal to any accrued and unpaid Excess Interest Amount.

*Section 4.5. Limitation on Liability.* In no event shall any party hereto be liable for special, indirect or consequential damages, or (except to the extent arising from third party claims) punitive damages arising out of, in connection with or as a result of this Agreement or any transaction contemplated hereby. Neither the Lender nor any of its officers or directors shall be liable or responsible to any Person for: (a) the use that may be made of the proceeds of any Advances made hereunder; (b) the validity, sufficiency or genuineness of documents, or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by the Lender against presentment of documents that do not comply with the terms of this Agreement; or (d) any other circumstances whatsoever in making or failing to make payment hereunder, except to the extent caused by the Lender's willful misconduct or gross negligence.

*Section 4.6. Security; Source of Repayment.* DEC's obligation to repay the Loans and all of its other Obligations under this Agreement are special obligations of DEC payable solely from, and secured as to the payment thereof by a pledge of, the Net Revenues, and DEC hereby pledges said Net Revenues to repay the Loans and all of its other Obligations under this Agreement. The Obligations shall not be or constitute a general obligation of DEC, nor shall they constitute an

indebtedness of DEC within the meaning of any corporate, constitutional, statutory or other provision, limitation or restriction. In addition, the Obligations constitute Parity Obligations and shall be on parity with respect to the payment of principal and interest from the Net Revenues and in all other respects to any Bonds and any other Parity Obligations. The Obligations shall not have any priority over any Bonds or any other Parity Obligations.

*Section 4.7. Survival.* All of DEC's obligations under this Article IV shall survive the termination of the Related Documents and payment of the other Obligations under this Agreement.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES**

*Section 5.1. Representations and Warranties.* In order to induce the Lender to enter into this Agreement, DEC makes the following representations and warranties to the Lender:

(a) *Legal Existence.* DEC (i) is a public body politic and corporate, duly organized and validly existing under and pursuant to the Act and the laws of the State, and (ii) has the full legal right, power and authority to (1) own its properties and to carry on its business as now being and hereafter proposed to be conducted, (2) execute and deliver this Agreement and the Related Documents (including, without limitation, the Notes), (3) perform all its obligations and liabilities under this Agreement and the Related Documents, (4) receive Advances, Loans, and otherwise incur Debt in accordance with this Agreement and (5) pay, solely from the Net Revenues, the principal of and interest on the Loans, as evidenced by the Notes and all of its Obligations hereunder (including, without limitation, the obligation to repay all Advances and Loans, to pay all interest thereon, and to pay all fees and other amounts payable hereunder).

(b) *Compliance with Law and Contract.* The execution, delivery and performance by DEC of this Agreement and the Related Documents in accordance with their respective terms and conditions have been duly authorized by all necessary action on the part of DEC, and do not and will not (i) violate the authorizing legislation of DEC, as amended, or any court order by which DEC is bound, (ii) conflict with, violate or contravene any provision of existing law (including, without limitation, the Act) or regulation, or any order or decree of any court, tribunal, governmental authority, bureau or agency, or (iii) conflict with, violate or cause a default, or with the passage of time or the giving of notice or both would cause a default, under any bond, note or other evidence of indebtedness or mortgage, indenture, contract or other agreement to which DEC is a party or that is binding upon it or any of its properties. No consent of any Person and no license, approval or authorization of, or notice to or registration, filing or declaration with, any governmental authority, bureau or agency is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Related Documents or for DEC to receive Advances or Loans, to issue the Notes or to otherwise incur indebtedness in accordance with this Agreement or, if required, the same has been obtained and is in full force and effect and true and complete copies thereof have been delivered to the Lender.

(c) *Authorization and Validity.* This Agreement constitutes a valid and binding agreement of DEC enforceable against DEC in accordance with its terms. The Notes constitute a valid and binding obligation of DEC enforceable against DEC in accordance with its term. The representations above are subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws heretofore or hereafter enacted affecting creditors' rights, and are subject to the application of principles of equity relating to or affecting the enforcement of contractual obligations, whether such enforceability is considered in a proceeding in equity or at law.

(d) *Litigation.* There are no actions, suits or proceedings at law or in equity pending or, to the knowledge of DEC, threatened against or affecting it or its properties before any court or arbitrator or any governmental or nongovernmental body, agency or official in which an adverse decision could materially and adversely affect the financial position or operations of DEC or which in any manner questions the validity of this Agreement or any Related Document or DEC's ability to carry out the transactions contemplated hereby and thereby or which in any manner draws into question the validity or enforceability of this Agreement, the Notes, the Act, the Energy Services Agreements or any other Related Document.

(e) *Related Documents.* The representations and warranties of DEC in all of the Related Documents are true and correct in all material respects and are incorporated herein by reference in this Agreement as if each and every such representation and warranty and definition were set forth herein in its entirety, and the representations and warranties made by DEC in the Related Documents are hereby made for the benefit of the Lender. No amendment to or waiver of such representations and warranties or definitions made pursuant to the relevant Related Document or incorporated by reference shall be effective to amend such representations and warranties and definitions as incorporated by reference herein without the prior written consent of the Lender.

(f) *Regulation U.* DEC is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System), and will not use the proceeds of any Advance made hereunder so as to violate Regulation U as it may be amended or interpreted from time to time by the Board of Governors of the Federal Reserve System. DEC is not an "investment company" or a company "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended.

(g) *Accuracy and Completeness of Information.* All information furnished to the Lender by DEC or its duly authorized agents on or prior to the Effective Date in connection with the transactions contemplated hereby was, at the time same was so furnished, true and correct in all material respects to the extent necessary to give the Lender true, complete and accurate knowledge of the subject matter thereof. DEC has disclosed to the Lender in writing any and all facts known to it which materially and adversely affect or may (to the extent DEC can now reasonably foresee) materially and adversely affect the

ability of DEC to receive the Revenues or the ability of DEC to perform its obligations under this Agreement, the Notes or any other Related Document.

(h) *Trust Estate.* The Authorizing Resolution validly creates the pledge that it purports to make of the Net Revenues in favor of the Lender securing the Obligations hereunder and under the Notes. All documents or instruments required to be filed or recorded in any public office, and all notifications required to be given to any Person, in order to provide notice of such pledge to present and future creditors and otherwise protect the pledge in favor of the holders of the Notes and the Lender, if any, have been filed, recorded or given, as the case may be. The Net Revenues have not been, and will not be, pledged by DEC to the payment of any obligation senior to the Loans, other than as expressly permitted in the Authorizing Resolution.

(i) *Legislation.* No legislation has been enacted by the Legislature of the State which in any way materially adversely affects or which prohibits (i) the issuance or delivery of the Notes, (ii) the adoption of the Authorizing Resolution, (iii) the execution and delivery of this Agreement or any of the Related Documents to which DEC is a party, (iv) the creation, organization or existence of DEC or the titles to office of any officers thereof, or (v) the power of DEC to carry out its obligations under the Authorizing Resolution, this Agreement or any of the other Related Documents to which DEC is a party.

(j) *Accuracy of Financial Reports.* The most recent financial reports of DEC at December 31, 2020, copies of which have been furnished to the Lender, fairly present the financial position and results of operations of DEC, as of the dates and for the periods set forth therein.

(k) *No Tax or Fee.* The execution and delivery of this Agreement and the Fee Agreement by DEC will not give rise to any tax or fee imposed by any state or local agency or governmental body.

(l) *No Event of Default.* No Event of Default or Default has occurred and is continuing hereunder. No default by DEC has occurred and is continuing in the payment of the principal of or premium, if any, or interest on any Bonds. No bankruptcy, insolvency or other similar proceedings pertaining to DEC or any agency or instrumentality of DEC are pending or presently contemplated. No “default” or “event of default” under, and as defined in, any of the other Related Documents has occurred and is continuing. DEC is not presently in default under any material agreement to which it is a party which could reasonably be expected to have a Material Adverse Effect. DEC is not in violation of any material term of the authorizing legislation applicable to DEC or any material term of any bond indenture or agreement to which it is a party or by which any of its Property is bound which could reasonably be expected to result in a Material Adverse Effect.

(m) *Sovereign Immunity.* As of the Effective Date, the defense of sovereign or governmental immunity is not available to DEC in any action or proceeding to enforce any of the obligations of DEC under this Agreement, the Notes or any other Related Document.

(n) *No Public Vote or Referendum.* There is no public vote or referendum pending, proposed or concluded, the results of which could reasonably be expected to result in a Material Adverse Effect.

(o) *Usury.* None of the Related Documents provide for any payments that would violate any applicable law regarding permissible maximum rates of interest.

(p) *Tax-Exempt Status.* DEC has not taken any action or omitted to take any action, and has no actual knowledge of any action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the Tax-Exempt Loans from gross income for federal income tax purposes.

(q) *Employee Benefit Plan Compliance.* DEC has no funding liability or obligation currently due and payable with respect to any employee benefit plan, pension plan or other post-employment benefits plan which could reasonably be expected to result in a Material Adverse Effect. DEC and each employee benefit plan, pension plan or other post-employment benefits plan is in compliance in all material respects with the terms of any such plan and applicable law related thereto. Neither DEC nor a member of the Controlled Group is subject to ERISA or maintains a Plan.

(r) *Anti-Corruption Laws and Sanctions.* DEC and its officers and employees and to the knowledge of DEC its directors and agents are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. No Advance, use of proceeds or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.

(s) *Swap Contracts.* DEC is not party to any Swap Contract.

(t) *Environmental Matters.* Except as otherwise described to the Lender in writing on or prior to the Effective Date, (i) DEC has not received any notice to the effect, or has any knowledge, that its Property or operations are not in compliance with any of the requirements of applicable federal, state and local environmental, health and safety statutes and regulations including, without limitation, regulations promulgated under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§6901 *et seq.* (“*Environmental Laws*”), or are the subject of any federal or state investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could reasonably be expected to result in a Material Adverse Effect; (ii) there have been no releases of hazardous materials at, on or under any Property now or previously owned or leased by DEC that, singly or in the aggregate, have, or may reasonably be expected to have, a Material Adverse Effect; (iii) there are no underground storage tanks, active or abandoned, including petroleum storage tanks, on or under any Property now or previously owned or leased by DEC that, singly or in the aggregate, have, or could reasonably be expected to result in, a Material Adverse Effect; (iv) DEC is not the subject of any remedial investigation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act



of 1986, 42 U.S.C. §9601 *et seq.* (“CERCLA”) that is reasonably expected to have a Material Adverse Effect; and (v) no conditions exist at, on or under any Property now or previously owned or leased by DEC which, with the passage of time, or the giving of notice or both, would give rise to liability under any Environmental Law, except to the extent such liability could not reasonably be expected to result in a Material Adverse Effect.

*Section 5.2. Survival of Representations and Warranties.* All statements contained in any certificate, financial statement or other instrument delivered by or on behalf of DEC pursuant to or in connection with this Agreement (including, but not limited to, any such statement made in or in connection with any amendment hereto) shall constitute representations and warranties made under this Agreement. All representations and warranties made under this Agreement shall be made and shall be true at and as of the time of each Advance hereunder and as of the Termination Date, except to the extent such representations and warranties relate solely to an earlier date.

## ARTICLE VI

### AFFIRMATIVE COVENANTS OF DEC

*Section 6.1. Affirmative Covenants of DEC.* So long as the Commitment is outstanding and until all Obligations shall have been paid in full, DEC hereby covenants and agrees that:

(a) *Compliance with Laws, Etc.* DEC shall comply with all applicable laws, rules, regulations and orders of any governmental authority, except that this Section 6.1(a) shall not apply to noncompliance that, singly or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect on (i) the financial condition or operations of DEC or (ii) the ability of DEC to perform its obligations hereunder, including, but not limited to, the timely payment of the Loans or Obligations. DEC will maintain in effect and enforce policies and procedures designed to ensure compliance by DEC and its directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

(b) *Net Revenues.* DEC shall at all times keep the Net Revenues and every part thereof free and clear of all pledges and security interests except the pledges granted in the Authorizing Resolution or permitted under the Related Documents, and shall maintain the pledge of the Net Revenues securing the Obligations hereunder and under the Notes as a fully perfected pledge of all right, title and interest of DEC in the Net Revenues. Nothing herein shall limit the authority of DEC to issue Bonds or Parity Obligations in accordance with the terms of the Authorizing Resolutions and the Related Documents.

(c) *Accuracy of Information.* All information furnished by DEC to the Lender, whether pursuant to this Agreement, or in connection with or pursuant to any amendment or modification of, or waiver under, this Agreement, shall, at the time the same are so furnished, be true, complete and correct in all material respects to the extent necessary to give the Lender true and accurate knowledge of the subject matter thereof.

(d) *Further Assurances.* DEC shall furnish to the Lender from time to time, at DEC's expense, all further instruments and documents, duly executed and delivered by DEC, and take all further action that may be reasonably necessary, or that the Lender may reasonably request, in order to (i) perfect and protect any security interest or other right or interest assigned, or purported to be assigned, to the Lender under or in connection with this Agreement, the Authorizing Resolution or any other Related Document, or (ii) enable the Lender to exercise or enforce its rights or remedies under or in connection with this Agreement, the Authorizing Resolution or any other Related Document.

(e) *Financial and Other Reports.* DEC shall furnish the following reports to the Lender:

(i) As soon as available and in any event within one hundred twenty (120) calendar days after the end of each Fiscal Year of DEC, the Lender shall have received audited financial statements of DEC for such Fiscal Year, which shall be in accordance with GAAP, consisting of an income statement, balance sheet and statement of cash flows, together with the auditor's report on internal control over financial reporting;

(ii) As soon as made publicly available, but in any event not later than sixty (60) calendar days after the close of the first three (3) fiscal quarters, unaudited quarterly financial statements consisting of an income statement and balance sheet with comparison to the same period in the prior fiscal year, in the form and with the content customarily prepared by DEC, if any;

(iii) Simultaneously with the delivery of each set of financial statements referred to in subsections (e)(i) and (e)(ii) above, a certificate of an Authorized Representative of DEC stating whether there exists on the date of such certificate any Default and, if any Default then exists, setting forth the details thereof and the action which DEC is taking or proposes to take with respect thereto;

(iv) Within thirty (30) calendar days of the approval thereof, DEC shall provide the Lender with its final annual budget;

(v) Promptly upon DEC learning thereof, (1) copies of any communications received by DEC from any taxing authority or Rating Agency with respect to the transactions contemplated hereby, and (2) notice of any change in the long-term ratings assigned to the Bonds of which DEC has actual knowledge;

(vi) Promptly upon DEC learning thereof, notice of any material default under any agreement evidencing indebtedness of DEC;

(vii) Simultaneously upon the incurrence thereof, notice of any additional Debt, including, but not limited to any Bank Agreements, incurred that is permitted under the Authorizing Resolution and Related Documents; and

(viii) From time to time such additional information regarding the financial position or business of DEC as the Lender may reasonably request.

(f) *Defaults.* DEC will promptly (and in no event later than 3 New York Banking Days after having knowledge thereof) notify the Lender of the occurrence of any Default or Event of Default specifying the details of such Default or Event of Default and the action that DEC proposes to take with respect thereto.

(g) *Books, Records.* DEC will permit, during normal business hours and from time to time, upon reasonable prior notice, the Lender or any of its agents or representatives to examine and make copies of and abstracts from the records and books of account of DEC, and to discuss the affairs, finances and accounts of DEC with any representative or any other appropriate officer of DEC or DEC's auditors; *provided, however*, that upon the occurrence of any Event of Default or Default hereunder, all of the Lender's reasonable costs associated with the inspection of property, books and records shall be for the account of DEC.

(h) *Other Obligations.* DEC will comply with and observe all other obligations and requirements set forth in the Authorizing Resolution and each other Related Document to which it is a party (including, without limitation, all provisions therein for the benefit of the Lender) and in all statutes and regulations binding upon it relating to the Notes, this Agreement or any of the Related Documents, and shall take any and all actions necessary to ensure the timely payment of all of the Obligations hereunder and the principal of and interest on the Notes.

(i) *Activities of DEC.* DEC will preserve, renew and maintain all licenses, approvals, authorizations, permits, rights, privileges and franchises it deems necessary or desirable in the normal conduct of its business.

(j) *Litigation; Material Change.* DEC shall promptly notify the Lender of (i) the existence and status of any litigation which individually or in the aggregate could, in the event of an unfavorable outcome, have a Material Adverse Effect on (1) the financial condition or operations of DEC, (2) the Net Revenues, (3) the Obligations, or (4) the enforceability or validity of any of the Related Documents, or (ii) any change in any material fact or circumstances represented or warranted in this Agreement or in any of the Related Documents.

(k) *Obligations under Related Documents.* DEC shall take all actions as may be reasonably requested by the Lender to enforce the obligations under the Related Documents of each of the other parties thereto, if any.

(l) *Other Agreements.* In the event that DEC shall, directly or indirectly, enter into another Bank Agreement with a Person which provides such Person with different or more restrictive covenants, different or additional events of default and/or greater rights and remedies than are provided to the Lender in this Agreement, DEC shall provide the Lender with a copy of each such Bank Agreement and such different or more restrictive

covenants, different or additional events of default and/or greater rights and remedies shall automatically be deemed to be incorporated into this Agreement and the Lender shall have the benefits of such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies as if specifically set forth herein but only for so long as DEC shall remain bound by such additional or different provisions of the Bank Agreement. DEC shall promptly enter into an amendment to this Agreement to include different or more restrictive covenants, different or additional events of default and/or greater rights and remedies; *provided* that the Lender shall have and maintain the benefit of such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies even if DEC fails to provide such amendment.

(m) *Underlying Rating.* DEC shall at all times maintain a rating on its long-term unenhanced Bonds from at least two Rating Agencies. DEC covenants and agrees that it shall not at any time withdraw any long-term unenhanced rating on its Bonds from any of Moody's, S&P or Fitch if the effect of such withdrawal would be to cure a Default or an Event of Default under this Agreement or reduce any amount or rate payable hereunder.

(n) *Disclosure to Participants and Transferees.* DEC shall permit the Lender to disclose the financial information received by the Lender pursuant to this Agreement to each Participant and Transferee pursuant to Section 9.7 hereof, subject to confidentiality restrictions and use restrictions customary for financial institutions.

(o) *Legislation.* DEC shall promptly notify the Lender of the enactment of all State legislation that, in any material way, relates to or impacts upon this Agreement or the Notes or the ability of DEC to perform its obligations in connection herewith or therewith.

(p) *Incorporation of Covenants.* DEC agrees that it will perform and observe each and every covenant and agreement required to be performed or observed by it in the Authorizing Resolution and the other Related Documents, and said covenants and agreements are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety (without giving effect to any expiration, amendment, supplement or termination of or waiver of compliance with, the Authorizing Resolution and the other Related Documents), and shall survive and be binding upon DEC.

(q) *Energy Service Agreements.* DEC will not, and will not consent to, the termination of any one or more Energy Service Agreements that, individually or in the aggregate, represent 15% or more of DEC's revenue base.

## ARTICLE VII

### NEGATIVE COVENANTS OF DEC

*Section 7.1. Negative Covenants of DEC.* So long as the Commitment is outstanding and available to DEC and until all of the Obligations shall have been paid in full, DEC hereby covenants and agrees that:

(a) *Amendments to Related Documents.* DEC shall not enter into or consent to any amendments of or supplements to any Related Document or any waiver of the requirements thereof that (i) materially adversely affects or could reasonably be determined to materially adversely affect the legality, validity, or enforceability of the Authorizing Resolution or any of the other Related Documents or any of the rights or remedies of the Lender thereunder, and (ii) has or could reasonably be determined have an adverse effect on the rights, powers, security, privileges, or obligations of the Lender under any Related Document. Nothing herein shall limit the authority of DEC to issue Bonds or Parity Obligations in accordance with the terms of the Authorizing Resolutions and the Related Documents.

(b) *Liens.* DEC shall not create or assume any Lien on any part of the Net Revenues now owned or hereafter acquired by it, except (i) the Liens created by the Authorizing Resolution and other Related Documents and (ii) any such Lien that DEC contests in good faith and by appropriate proceedings.

(c) *Merger; Disposition of Assets.* DEC shall not consolidate or merge with or into any Person or sell, lease or otherwise transfer all or substantially all of its assets to any Person except as may be provided pursuant to the Act.

(d) *Total Outstanding.* At no time shall DEC permit the aggregate principal amount of all Loans to exceed the Commitment.

(e) *Preservation of Corporate Existence, Etc.* DEC shall take no action to terminate its existence as a public body and a body corporate and politic organized under the laws of the State, or its rights and privileges in the State.

(f) *Tax-Exempt Status.* DEC shall not take any action, omit to take any action or cause or permit any other Person to take any action or omit to take any action, that, if taken or omitted, would adversely affect the excludability of interest on the Tax-Exempt Note from the gross income of the holders thereof for purposes of Federal income taxation.

(g) *Application of Proceeds.* DEC will not take or omit to take any action, which action or omission will in any way result in the proceeds from the Loans being applied in a manner other than as provided in the Authorizing Resolution and this Agreement. DEC will not request any Advance, and its directors, officers, employees and agents shall not use the proceeds of any Advance, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of

value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent such activities, businesses or transactions would be prohibited by Sanctions if conducted by a corporation incorporated in the United States, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

(h) *Immunity from Jurisdiction.* With respect to any claim under this Agreement and the Notes, to the fullest extent permitted by Applicable Law, DEC will not assert any immunity it may have as a public entity under the laws of the State from lawsuits with respect to the Loans, the other Obligations, this Agreement or any other Related Document.

(i) *Swap Contracts.* Without the prior written consent of the Lender, DEC will not enter into any Swap Contract relating to Debt (i) wherein any termination payments thereunder are senior to or on parity with the payment of the Loans or the other Obligations or (ii) which requires DEC to post cash collateral to secure its obligations thereunder.

(j) *ERISA.* DEC shall not be, and shall not permit a member of the Controlled Group to be, subject to ERISA and shall not maintain, nor permit a member of the Controlled Group to maintain, a Plan. DEC and each employee benefit plan, if any, shall remain in compliance in all material respects with the terms of any such plan and applicable law related thereto.

(k) *Federal Reserve Board Regulations.* DEC shall not use any portion of the proceeds of the Advances for the purpose of carrying or purchasing any margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) and shall not incur any Debt which is to be reduced, retired or purchased by DEC out of such proceeds.

(l) *Additional Debt.* DEC shall not incur additional Debt except as may be permitted by the Authorizing Resolution and the other Related Documents.

(m) *Investments.* DEC shall not make, retain or have outstanding any investments of proceeds of Advances other than those investments made in compliance with DEC's Investment Policy.

## ARTICLE VIII

### DEFAULTS AND REMEDIES

*Section 8.1. Events of Default.* The occurrence of any of the following events (whatever the reason for such event and whether voluntary, involuntary, or effected by operation of law) shall be an “Event of Default” hereunder:

(a) (i) DEC shall fail to pay any principal of or interest on any Loan when the same becomes due and payable; or (ii) DEC shall fail to pay any other fee or amount payable under this Agreement and such failure shall continue for three (3) New York Banking Days after notice of such failure to pay such fees is provided in writing to DEC; or

(b) Any representation, warranty, certification or statement made by DEC in this Agreement or in any Related Document or in any certificate, financial statement or other document delivered pursuant to this Agreement or any Related Document shall have been incorrect or untrue in any materially adverse respect when made or deemed to have been made; or

(c) DEC shall default in the due performance or observance of any term, covenant or agreement contained in Sections 6.1(a), (b), (e), (f), (g), (m) or (q) or Article VII hereof; or

(d) DEC shall default in the due performance or observance of any term, covenant or agreement contained in this Agreement (other than those covered by paragraphs (b), (c) and (e) of this Section 8.1) and such default, if capable of being remedied, shall remain unremedied for thirty (30) days after the earlier of (i) written notice thereof shall have been given to DEC by the Lender or (ii) the date on which DEC becomes aware of such default; or

(e) Any pledge or security interest created by the Authorizing Resolution or this Agreement to secure any amount due under this Agreement or the Notes shall fail to be fully enforceable with the priority required under this Agreement and the Authorizing Resolution; or

(f) DEC shall default in the due performance or observance of any term, covenant or agreement contained in any of the Related Documents and the same shall not have been cured within any applicable cure period; or

(g) (i) (1) any default under any indenture, contract or instrument providing for the creation of or concerning any Debt (other than Bonds) of DEC in excess of \$5,000,000 shall occur and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such default or event is to permit or cause the acceleration of the maturity of such Debt; or (2) pursuant to the provisions of any such indenture, contract or instrument the maturity of any Debt of DEC in a principal amount in

excess of \$5,000,000 is permitted to be or shall have been accelerated or shall have been required to be prepaid prior to the stated maturity thereof, or (ii) (1) DEC shall fail to pay when due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) any Bonds, or any interest or premium thereon, and such failure shall continue beyond any applicable period of grace specified in any underlying indenture, contract or instrument providing for the creation of or concerning such Bonds; or (2) any default under any indenture, contract or instrument providing for the creation of or concerning any Bonds, or any other event, shall occur and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such default or event is to permit or cause the acceleration of the maturity of such Bonds; or (3) pursuant to the provisions of any such indenture, contract or instrument the maturity of any Bonds is permitted to be or shall have been accelerated or shall have been required to be prepaid prior to the stated maturity thereof; or

(h) DEC shall become insolvent or admit in writing its inability to pay its debts as they mature or shall declare a moratorium on the payment of its debts or apply for, consent to or acquiesce in the appointment of a trustee, custodian, liquidator or receiver for itself or any part of its property, or shall take any action to authorize or effect any of the foregoing; or in the absence of any such application, consent or acquiescence, a trustee, custodian, liquidator or receiver shall be appointed for it or for a substantial part of its property or Revenues and shall not be discharged within a period of thirty (30) days; or the State or any other governmental authority having jurisdiction over DEC imposes a debt moratorium, debt restructuring, or comparable restriction on repayment when due and payable of the principal of or interest on any Debt or Bonds by DEC; or all, or any substantial part, of the property of DEC shall be condemned, seized, or otherwise appropriated, or either bankruptcy, reorganization, debt arrangement or other proceeding under either bankruptcy or insolvency law or any dissolution or liquidation proceeding shall be instituted by or against DEC (or any action shall be taken to authorize or effect the institution by it of any of the foregoing) and if instituted against it, shall be consented to or acquiesced in by it, or shall not be dismissed within a period of thirty (30) days; or

(i) This Agreement, the Authorizing Resolution or any material provision hereof or thereof at any time after its execution and delivery, or the Notes, shall cease to be a valid contractual obligation of DEC or in full force and effect, in each case, as a result of federal or state legislative or administrative action, or shall be declared in a final non-appealable judgment by any court having jurisdiction over DEC to be null and void, or the validity of this Agreement, the Authorizing Resolution, the Notes or any material provisions thereof shall be contested (i) by DEC or (ii) by any governmental agency or authority having jurisdiction over DEC; or DEC shall deny in writing that it has any or further liability or obligation under this Agreement, the Authorizing Resolution, the Notes or any material provision thereof; or

(j) The obligation of DEC to pay the principal of and interest on the Loans or the Notes shall at any time cease to exist or be adjudged unenforceable, in each case, pursuant to a final administrative determination or judicial decision or DEC shall assert that such obligation ceases to exist or is unenforceable; or



(k) Moody's, S&P or Fitch shall have downgraded the long-term rating assigned to any Bonds below "Baa3" by Moody's (or its equivalent) or "BBB-" (or its equivalent) by S&P or "BBB-" (or its equivalent) by Fitch or any of Moody's, S&P or Fitch shall have suspended or withdrawn its long-term unenhanced rating assigned to any Bonds for credit-related reasons; or

(l) A final and non-appealable judgment or court order for the payment of money exceeding any applicable insurance coverage by more than \$5,000,000 shall be rendered against DEC and shall attach to the Net Revenues, and such judgment or court order shall continue unsatisfied and in effect for a period of thirty (30) consecutive days without being vacated, discharged, satisfied, or stayed; or

(m) Any one or more parties to Energy Service Agreements representing 15% or more of DEC's revenue base shall contest the validity or enforceability of its Energy Service Agreements by filing any judicial or regulatory action, suit or proceeding, seeking as a remedy the declaration of the unenforceability or the material modification of its Energy Service Agreements, and such contest shall continue to be unopposed by DEC; or

(n) One or more Energy Service Agreements which, individually or in the aggregate, represent 15% or more of DEC's revenue base shall for any reason be terminated other than early termination by the applicable counterparty thereto whereby all applicable Debt owed to DEC thereunder is paid in full.

*Section 8.2. Rights and Remedies upon Default.* Upon the occurrence of an Event of Default hereunder, the Lender may take one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times):

(i) declare all Obligations to be immediately due and payable, whereupon the same are immediately due and payable without any further notice of any kind, which notice is waived by DEC; *provided, however*, that in the case of an Event of Default described in Section 8.1(h) hereof, such acceleration will automatically occur (unless such automatic acceleration is waived by the Lender in writing);

(ii) by written notice to DEC, reduce the Commitment to zero and thereafter the Lender will have no further obligation to make Advances or Loans hereunder and/or terminate the Commitment; *provided, however*, that the Commitment shall immediately reduce to zero and terminate without notice upon the occurrence of an Event of Default under Section 8.1(h) hereof;

(iii) either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under the Related Documents or to enforce performance or observance of any obligation, agreement or covenant of DEC under the Related Documents, whether for specific performance of any agreement or covenant of

DEC or in aid of the execution of any power granted to the Lender in the Related Documents;

(iv) cure any Default, Event of Default or event of nonperformance hereunder or under any Related Document; *provided, however*, that the Lender shall have no obligation to effect such a cure; and

(v) exercise, or cause to be exercised, any and all remedies as it may have under the Related Documents and as otherwise available at law and at equity.

*Section 8.3. Rights and Remedies Cumulative; Non-Waiver; etc.* The enumeration of the rights and remedies of the Lender set forth in this Agreement is not intended to be exhaustive and the exercise by the Lender of any right or remedy shall not preclude the exercise of any other rights or remedies, all of which shall be cumulative, and shall be in addition to any other right or remedy given hereunder or under the other Related Documents or that may now or hereafter exist at law or in equity or by suit or otherwise. No delay or failure to take action on the part of the Lender in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege or shall be construed to be a waiver of any Event of Default. No course of dealing between DEC, the Lender, or their respective agents or employees shall be effective to change, modify or discharge any provision of this Agreement or any of the other Related Documents or to constitute a waiver of any Event of Default.

*Section 8.4. Crediting of Payments and Proceeds.* In the event that the Lender has exercised any remedy set forth in this Agreement or any other Related Document, all payments received by the Lender upon the Obligations and all net proceeds from the enforcement of the Obligations shall be applied:

*First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts, including attorney fees, payable to the Lender;

*Second*, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans;

*Third*, to payment of that portion of the Obligations constituting unpaid principal of the Loans;

*Last*, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to DEC or as otherwise required by Applicable Law.

## ARTICLE IX

### MISCELLANEOUS

*Section 9.1. Evidence of Debt.* The Lender shall maintain in accordance with its usual practices an account or accounts evidencing the indebtedness resulting from each Advance and each Loan made from time to time hereunder and the amounts of principal and interest payable and paid from time to time hereunder. In any legal action or proceeding in respect of this Agreement, the entries made in such account or accounts shall be conclusive evidence (absent manifest error) of the existence and amounts of the obligations therein recorded.

*Section 9.2. Amendments and Waivers.* Except as specifically provided in any Related Document, including, but not limited to as provided in Section 2.10 and Section 2.11 herein, any term, covenant, agreement or condition of this Agreement or any of the other Related Documents may be amended or waived by the Lender, and any consent may be given by the Lender, if, but only if, (i) such amendment, waiver or consent is in writing signed by the Lender and (ii) in the case of any amendment, signed by DEC.

*Section 9.3. Addresses for Notices.* Any notice required or permitted to be given under or in connection with this Agreement shall be in writing and shall be mailed by first class mail, registered or certified, return receipt requested, or express mail, postage prepaid, or sent by email, telex, telegram, telecopy or other similar form of rapid transmission confirmed by mailing (by first class mail, registered or certified, return receipt requested, or express mail, postage prepaid) written confirmation at substantially the same time as such rapid transmission, or personally delivered to an officer of the receiving party. All such communications shall be mailed, sent or delivered to the address or numbers set forth below, or as to each party at such other address or numbers as shall be designated by such party in a written notice to the other parties.

DEC: District Energy Corporation  
c/o Jason Fortik  
Lincoln Electric System  
9445 Rokeby Road  
Lincoln, NE 68526  
Telephone: (402) 473-3380  
Facsimile: (402) 473-3208  
Email: jfortik@les.com

With a copy to:

Emily N. Koenig  
Lincoln Electric System  
9445 Rokeby Rd  
Lincoln, NE 68526  
Telephone: (402) 473-3315  
Facsimile: (402) 473-3208  
Email: ekoenig@les.com

The Lender:

With respect to credit matters:

JPMorgan Chase Bank, National Association  
383 Madison Avenue, Floor 3  
NY1-M165  
New York, NY 10179  
Attention: Heather Talbott  
Telephone: (212) 270-4875  
Facsimile: (917) 464-2427  
Email: heather.x.talbott@jpmorgan.com  
taylor.n.stordahl@jpmorgan.com  
public.finance.notices@jpmorgan.com

Wire instructions for payments:

JPMorgan Chase Bank, National Association  
ABA: 021-000-021  
Account Name: LS2 Incoming Account  
Account # 469796754G0190  
Reference: District Energy Corporation

With respect to operational matters:

DNT Asset Trust  
Loan & Agency Services  
500 Stanton Christiana Road, 1st Floor  
Newark, DE 19713-2105  
Attention: Sabiha Hossain  
Tel: (302) 634-2154  
Email: 12012443628@tls.ldsprod.com  
PFG\_Servicing@jpmorgan.com

With respect to compliance matters:

Email: public.finance.notices@jpmorgan.com

*Section 9.4. Survival of This Agreement.* All covenants, agreements, representations and warranties made in this Agreement shall survive the extension by the Lender of the Commitment and shall continue in full force and effect so long as the Commitment shall be unexpired or any sums drawn or due thereunder or any other obligations shall be outstanding and unpaid, regardless of any investigation made by any Person and so long as any amount payable hereunder remains unpaid. The agreement of DEC to indemnify the Lender and each Indemnitee under Section 4.1 hereof shall continue in full force and effect notwithstanding a termination of the Commitment or the fulfillment of all Obligations. The obligations of DEC under Section 2.5(b) and Article IV hereof shall also continue in full force and effect notwithstanding a termination of the Commitment or the fulfillment of all other Obligations. Whenever in this Agreement or in the Fee Agreement

the Lender is referred to, such reference shall be deemed to include the successors and assigns of the Lender and all covenants, promises and agreements by or on behalf of DEC which are contained in this Agreement or in the Fee Agreement shall inure to the benefit of the successors and assigns of the Lender.

*Section 9.5. Severability.* Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

*Section 9.6. Governing Law; Waiver of Jury Trial.* This Agreement and the Fee Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without giving effect to conflicts of laws provisions; *provided, however*, that the obligations of DEC hereunder and under the Fee Agreement shall be governed by, and construed in accordance with, the laws of the State.

(a) To the extent permitted by Applicable Law, each of the parties hereto hereby irrevocably waives its right to a jury trial of any claim or cause of action based upon or arising out of this Agreement, the related documents or any of the transactions contemplated hereby or thereby, including contract claims, tort claims, breach of duty claims, and all other common law or statutory claims.

*Section 9.7. Successors and Assigns; Participations; Certain Pledges.*

(a) *Successors and Assigns Generally.* This Agreement is a continuing obligation and shall be binding upon DEC, its successors, transferees and assigns and shall inure to the benefit of the Lender and its permitted successors, transferees and assigns. DEC may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Lender. Notwithstanding anything to the contrary set forth herein, so long as no Event of Default shall have occurred and be continuing hereunder, the Lender may not assign its obligations to fund Advances and Loans pursuant to the terms of this Agreement without the prior written consent of DEC (such consent not to be unreasonably withheld). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, and Participants to the extent provided in subsection (b) of this Section 9.7) any legal or equitable right, remedy or claim under or by reason of this Agreement. An assignee shall not be entitled to receive any greater payment under Sections 4.2 and 4.3 hereof than the Lender would have been entitled to receive had such assignment not been made.

(b) *Participations.* The Lender shall have the right to grant participations in all or a portion of its interest in the Notes, this Agreement and the other Related Documents to one or more other banking institutions; *provided, however*, that (i) no such participation by any such participant shall in any way affect the obligations of the Lender hereunder, (ii) DEC shall be required to deal only with the Lender with respect to any matters under this Agreement, the Notes and the other Related Documents, and (iii) and no such participation shall be in an amount less than \$100,000.

Any agreement or instrument that grants a participation shall provide that the Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement, and shall provide that the Participant shall not have the right to consent to amendments, modifications or waivers of any provision of this Agreement except for those that would increase the amount of the Commitment; reduce the rate of interest on Loans; extend the maturity date of any Loans; or release all or substantially all of the collateral pledged to the payment of the Loans. A participant shall not be entitled to receive any greater payment under Sections 4.2 and 4.3 hereof than the Lender would have been entitled to receive with respect to the participation sold.

(c) *Certain Pledges.* The Lender may at any time pledge or grant a security interest in all or any portion of its rights under the Notes, this Agreement and the other Related Documents to secure obligations of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

*Section 9.8. Setoffs.* To the fullest extent permitted by Applicable Law, upon the occurrence and during the continuance of any Event of Default hereunder, the Lender is hereby authorized at any time and from time to time without notice to DEC (any such notice being expressly waived by DEC) to setoff or to exercise any banker's lien or any right of attachment or garnishment and apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or monies, in each case only to the extent consisting of Net Revenues, at any time held by the Lender to or for the account of DEC against any and all of the obligations of DEC now or hereafter existing under or in connection with this Agreement or the related Notes, whether or not the Lender shall have made any demand hereunder or thereunder. The rights of the Lender under this Section are in addition to other rights and remedies (including, without limitation, other rights of setoff) which the Lender may have.

*Section 9.9. Counterparts; Electronic Signatures.* This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which counterparts, taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.3), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an "*Ancillary Document*") that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof

or the use of a paper-based recordkeeping system, as the case may be; *provided* that nothing herein shall require the Lender to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; *provided, further*, without limiting the foregoing, 1. to the extent the Lender has agreed to accept any Electronic Signature, the Lender shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of DEC without further verification thereof and without any obligation to review the appearance or form of any such Electronic signature and 2. upon the request of the Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, DEC hereby a. agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Lender, DEC and the Loan Parties, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, b. the Lender may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), c. waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and d. waives any claim against the Lender for any liabilities arising solely from the Lender's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any liabilities arising as a result of the failure of DEC to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

*Section 9.10. Patriot Act.* The Lender is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "*Patriot Act*") and, therefore, hereby notifies DEC that, pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Issuer, which information includes the name and address of DEC and other information that will allow such Lender to identify DEC in accordance with the Patriot Act.

*Section 9.11. No Fiduciary Relationship.* In connection with all aspects of the transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Related Document), DEC acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) the services regarding this Agreement provided by the Lender and any Affiliate thereof and the sale by DEC, and the making of Loans hereunder are arm's-length commercial transactions between DEC, on the one hand, and the Lender and its Affiliates, on the other hand, (ii) DEC has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) DEC is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Related Documents; (b) (i) the Lender and its Affiliates each is and has been

acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for DEC, or any other Person and (ii) neither the Lender nor any of its Affiliates has any obligation to DEC with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Related Documents or as provided by Applicable Laws; and (c) the Lender and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of DEC, and neither the Lender nor any of its Affiliates has any obligation to disclose any of such interests to DEC.

*Section 9.12. Acknowledgement Regarding Any Supported QFCs .* To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any agreement or instrument that is a QFC (such support “*QFC Credit Support*” and each such QFC a “*Supported QFC*”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “*U.S. Special Resolution Regimes*”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a “*Covered Party*”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the parties hereto have caused this Credit Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

DISTRICT ENERGY CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DNT ASSET TRUST,  
as Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A

### FORM OF NOTE

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “*SECURITIES ACT*”), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS NOTE NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION REQUIREMENT OF THE SECURITIES ACT. IN ADDITION, THIS NOTE MAY NOT BE SOLD, TRANSFERRED, ASSIGNED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO THE TERMS OF SECTION 9.7 OF THE HEREINAFTER DEFINED CREDIT AGREEMENT.

UNITED STATES OF AMERICA

STATE OF NEBRASKA

DISTRICT ENERGY CORPORATION

[TAX-EXEMPT] [TAXABLE] PROMISSORY NOTE

Dated: August \_\_\_\_, 2021

Maximum Principal Amount: UP TO FIVE MILLION DOLLARS (\$5,000,000)

Registered Owner: DNT Asset Trust

District Energy Corporation, a public body corporate and politic duly organized under the laws of the State of Nebraska (“*DEC*”), hereby acknowledges itself to owe and for value received hereby promises to pay to the Registered Owner set forth above, or registered assigns, so much of the Maximum Principal Amount stated above as shall have been loaned by the Registered Owner pursuant to the Credit Agreement (hereinafter defined) and not repaid or prepaid and which shall remain outstanding from time to time, and interest thereon, payable as provided herein and in such Credit Agreement. Terms used but not defined herein shall have the respective meanings given to them in such Credit Agreement.

This [Tax-Exempt] [Taxable] Note evidences Advances or [Tax-Exempt] [Taxable] Loans made by the Registered Owner to DEC in the Maximum Principal Amount set forth above pursuant to the Amended and Restated Credit Agreement dated as of August \_\_\_\_, 2021, as amended, supplemented, modified or restated from time to time (the “*Credit Agreement*”) by and between the Registered Owner, as Lender thereunder, and DEC. This [Tax-Exempt] [Taxable] Note shall mature not later than the Commitment Expiration Date, subject to prepayment as provided in the Credit Agreement.

This [Tax-Exempt] [Taxable] Note shall bear interest on the outstanding principal amount hereof at the rate relating to the [Tax-Exempt] [Taxable] Loan as provided in the Credit

Agreement, and the principal of this **[Tax-Exempt] [Taxable]** Note shall be payable in the amounts and on the dates as provided in the Credit Agreement.

This **[Tax-Exempt] [Taxable]** Note is issued and to be issued under the authority of and in full compliance with the Constitution and statutes of the State, including the Interlocal Cooperation Act, and the Authorizing Resolution, which authorizes said **[Tax-Exempt] [Taxable]** Note for the purposes authorized by the Authorizing Resolution. This **[Tax-Exempt] [Taxable]** Note is a special obligation of DEC, the principal of and interest on which shall be payable only from, and secured only by, the Net Revenues as provided in the Credit Agreement and the Authorizing Resolution.

All sums becoming due on this **[Tax-Exempt] [Taxable]** Note for principal and interest shall be paid to the Lender as provided in the Credit Agreement, in lawful money of the United States, without the presentation or surrender of this Note or the making of any notation hereon, except as provided in the next paragraph and except that upon the written request of DEC made concurrently with or reasonably promptly after prepayment in full of this Note, the Registered Owner of this **[Tax-Exempt] [Taxable]** Note shall surrender this Note for cancellation, reasonably promptly after any such request, to DEC. Prior to any sale or other disposition of this **[Tax-Exempt] [Taxable]** Note, the Registered Owner of this Note shall endorse hereon the amount of principal paid hereon and the last date to which interest has been paid hereon.

All payments of principal of this Note (whether at maturity or upon prepayment), including the date and amount of each payment, shall be endorsed by the Registered Owner of this **[Tax-Exempt] [Taxable]** Note on the Schedule of Payments attached to this **[Tax-Exempt] [Taxable]** Note; *provided, however*, that any failure by the Registered Owner of this Note to endorse such information on such Schedule or any error therein shall not in any manner affect the obligation of DEC to make payments of principal and interest in accordance with the terms of this **[Tax-Exempt] [Taxable]** Note.

This Note is subject to prepayment on the dates and in the amounts, in whole or in part, of the outstanding principal of the related **[Tax-Exempt] [Taxable]** Loan evidenced and secured by this **[Tax-Exempt] [Taxable]** Note as provided in Section 3.5 of the Credit Agreement.

This **[Tax-Exempt] [Taxable]** Note is issued in fully registered form and is non-negotiable. This Note is transferable as permitted by Section 9.7 of the Credit Agreement by the Registered Owner hereof only upon the books of registry maintained by DEC at the principal office of DEC, upon surrender of this **[Tax-Exempt] [Taxable]** Note for cancellation together with a written instrument of transfer satisfactory to DEC duly executed by the Registered Owner or such owner's duly authorized attorney. Upon such cancellation and registration of transfer, a new **[Tax-Exempt] [Taxable]** Note for the same aggregate principal amount will be issued to the transferee in exchange therefor.

It is hereby certified and recited that all acts, conditions and things required by the Constitution and by the laws of the State to exist, or to be done precedent to and in the issuance of this **[Tax-Exempt] [Taxable]** Note, do exist, and have been properly done, have happened and

been performed in regular and due form and time as required by law; and that provision has been made to pay the principal hereof and interest hereon as same falls due.

DISTRICT ENERGY CORPORATION

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

[SEAL]

ATTEST:

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

### **SCHEDULE OF PAYMENTS**

<b>DATE OF LOAN</b>	<b>AMOUNT OF LOAN</b>	<b>NOTATION MADE BY</b>	<b>DATE OF PAYMENT/ PREPAYMENT</b>	<b>AMOUNT OF PAYMENT/ PREPAYMENT</b>	<b>NOTATION MADE BY</b>
-------------------------	---------------------------	-----------------------------	--	--	-----------------------------

**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

---

[Please insert Social Security or Taxpayer Identification Number of Transferee]

---

---

[Please print or type name and address, including zip code, of Transferee]

---

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints

---

attorney to register the transfer of the within Note on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

---

NOTICE: Signature(s) must be guaranteed by a member or participant of a signature guarantee program

---

NOTICE: The signature above must correspond with the name of the Owner as it appears upon the front of this Note in every particular, without alteration or enlargement or change whatsoever.

**EXHIBIT B**

**[FORM OF REQUEST FOR ADVANCE]**

**REQUEST FOR ADVANCE AND LOAN**

DNT Asset Trust  
Loan & Agency Services  
500 Stanton Christiana Road,  
NCC5, 1st Floor  
Newark, DE 19713-2107  
Attention: Sabiha Hossain  
Email: PFG\_Servicing@jpmorgan.com  
12012443628@tls.ldsprod.com

With a copy to:

JPMorgan Chase Bank, National Association  
383 Madison Avenue, Floor 3  
NY1-M165  
New York, NY 10179  
Attention: Heather Talbott  
Telephone: (212) 270-4875  
Facsimile: (917) 464-2427  
Email: heather.x.talbott@jpmorgan.com  
taylor.n.stordahl@jpmorgan.com

Ladies and Gentlemen:

The undersigned, an Authorized Representative, refers to the Amended and Restated Credit Agreement, dated as of August 19, 2021 (together with any amendments or supplements thereto, the "*Agreement*"), by and between District Energy Corporation ("*DEC*") and DNT Asset Trust (the "*Lender*") (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 2.2 of the Agreement, that the Lender make an Advance under the Agreement, and in that connection sets forth below the following information relating to such Advance (the "*Proposed Advance*"):

1. The New York Banking Day of the Proposed Advance is \_\_\_\_\_, 20\_\_\_\_ (the "*Advance Date*") which is at least two New York Banking Days after the date hereof.
2. The principal amount of the Proposed Advance is \$\_\_\_\_\_, which is not greater than the Commitment as of the Advance Date set forth in 1 above. The Proposed Advance is a [Taxable][Tax-Exempt] Advance.

3. The aggregate amount of the Proposed Advance shall be used solely for the following purpose, which is a purpose allowed under the Agreement and the Authorizing Resolution:

**[INSERT PROJECT NAME/DESCRIPTION]**

4. After giving effect to the Proposed Advance, the aggregate principal amount of all Loans outstanding under the Agreement will not exceed the Commitment after giving effect to the Proposed Advance.

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Advance Date, before and after giving effect thereto:

(a) the undersigned is an Authorized Representative;

(b) the representations and warranties of DEC set forth in Article V of the Agreement and in each other Related Document shall be true and correct in all material respects on the date hereof and on such Advance Date as though made on the date hereof and on the date of Advance Date;

(c) no Default or Event of Default shall have occurred and be continuing on such Advance Date; and

(d) after giving effect to such extension of credit, the aggregate principal amount of all Advances shall not exceed the Commitment.

The Proposed Advance shall be made by the Lender by wire transfer of immediately available funds to the undersigned in accordance with the instructions set forth below:

**[Insert wire instructions]**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Very truly yours,

DISTRICT ENERGY CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT C**

**[FORM OF NOTICE OF TERMINATION OR REDUCTION]**

**NOTICE OF TERMINATION OR REDUCTION**

**[Date]**

DNT Asset Trust  
Loan & Agency Services  
500 Stanton Christiana Road,  
NCC5, 1st Floor  
Newark, DE 19713-2107  
Attention: Sabiha Hossain  
Email: PFG\_Servicing@jpmorgan.com  
12012443628@tls.ldsprod.com

With a copy to:

JPMorgan Chase Bank, National Association  
383 Madison Avenue, Floor 3  
NY1-M165  
New York, NY 10179  
Attention: Heather Talbott  
Telephone: (212) 270-4875  
Facsimile: (917) 464-2427  
Email: heather.x.talbott@jpmorgan.com  
taylor.n.stordahl@jpmorgan.com

Re: Amended and Restated Credit Agreement dated as of August 19, 2021

Ladies and Gentlemen:

The District Energy Corporation (“DEC”), through its undersigned, an Authorized Representative, hereby certifies to DNT Asset Trust (the “Lender”), with reference to the Amended and Restated Credit Agreement dated as of August 19, 2021 (together with any amendments or supplements thereto, the “Agreement”) by and between DEC and the Lender (the terms defined therein and not otherwise defined herein being used herein as therein defined):

**[(1) DEC hereby informs you that the Commitment is terminated in accordance with the Agreement.]**

Or

**[(1) DEC hereby informs you that the Commitment is reduced from [insert amount as of the date of this Notice] to [insert new amount], such reduction to be effective on \_\_\_\_\_.]**

IN WITNESS WHEREOF, DEC has executed and delivered this Notice this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

DISTRICT ENERGY CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# TAB IX

***DISTRICT ENERGY CORPORATION  
RESOLUTION NO. 23-02***

***AN EXPRESSION OF APPRECIATION TO TAMMY WARD FOR HER  
SERVICE ON THE BOARD OF THE DISTRICT ENERGY CORPORATION.***

*WHEREAS, Tammy Ward has served on the District Energy Corporation Board of Directors as a Director from July of 2019 to present; and*

*WHEREAS, Tammy has applied her knowledge and experience to the benefit of the District Energy Corporation and the citizens of our community; and*

*WHEREAS, the Board of Directors wishes to publicly express appreciation for Tammy's contributions to the District Energy Corporation and her commitment to public service, and to record the same in the public records of the District Energy Corporation.*

***NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF  
DIRECTORS OF THE DISTRICT ENERGY CORPORATION:***

***That the Board of Directors and staff of the District Energy Corporation do hereby publicly recognize, and express heartfelt appreciation to***

***TAMMY WARD***

***for her contributions to the District Energy Corporation while serving on the Board of Directors and for her years of devoted service to the community.***

*BE IT FURTHER RESOLVED: that a copy of this Resolution be included in the official minutes of the District Energy Corporation, and be kept in its official records, and a copy thereof be delivered to Tammy Ward for her files.*

*PASSED AND APPROVED on this 18th day of April, 2023.*

***ATTEST:***

-----  
*Secretary/Treasurer*

-----  
*Board Chair*