

**EXHIBIT A-FORM OF LEASE**

**LEASE AND SOLAR EASEMENT**

This Lease and Solar Easement (“Lease”) is entered into and effective on \_\_\_\_\_, 2015 (“Effective Date”) between the City of Edina, a Minnesota municipal corporation (with its successors and assignees, “Lessor”), and \_\_\_\_\_, a \_\_\_\_\_ (with its permitted successors and assignees, “Lessee”). Lessor and Lessee may be referred to individually as a “Party” and collectively as “Parties.”

**RECITALS**

1. Lessor is the owner of real property located in Hennepin County, Minnesota and more specifically described in Exhibit A (the “Lessor Property”). Lessor owns and operates a public works building on part of the Lessor Property as described in Exhibit A (the “PW Building”).
2. Lessee is engaged in the business of developing, constructing, owning and operating solar energy conversion facilities for the production of electricity and sale of such electricity at wholesale, including community solar gardens pursuant to Minn. Stat. Section 216B.1641 (2013).
3. Lessee wishes to lease a portion of the Lessor Property to install and operate a solar photovoltaic energy conversion facility on the roof of the PW Building, together with a related solar easement, and Lessor is willing to grant Lessee a lease and easement in accordance with the terms of this Lease.

NOW, THEREFORE, in consideration of the above premises and the mutual promises and other consideration set forth below, the adequacy and receipt of which is acknowledged, Lessor and Lessee agree as follows:

**ARTICLE I. Premises**

**Section 1.1 General**

- (a) Lessor leases to Lessee and Lessee leases from Lessor the real property legally described in Exhibit A attached hereto (the “Premises”) for the purposes of (i) monitoring, testing and assessing the Premises for solar photovoltaic energy generation, and (ii) developing, constructing, installing, operating and maintaining photovoltaic electric energy generating equipment, supporting structures and ballasts, inverters, electrical transformers, fixtures, electric distribution and transmission lines, communication lines, metering equipment, interconnection facilities and related facilities and equipment (collectively, the “Facility”) on the

Premises and Transmission Premises. Lessee's rights under this Lease with respect to the Premises shall be exclusive and Lessor acknowledges that Lessor may not grant any other person or entity any such rights.

- (b) Lessee shall use the Premises only for the evaluation, development, construction, installation, maintenance, and operation of the Facility. Any improvements, fixtures or structures other than the Facility shall not be installed without the express written consent of Lessor. Subject to Section 4.6, Lessee shall also be entitled to ingress and egress to and from its Facility and appurtenant equipment and electrical power lines and Lessor grants Lessee an access easement ("Access Easement") through that portion of the Lessor Property identified on Exhibit A as the "Access Premises" for purposes of Lessee's access to the Facility on the Premises.
- (c) Lessor grants Lessee an easement on and through that portion of the Lessor Property described in Exhibit A (the "Transmission Premises") for the purpose of installing, operating and maintaining an electric distribution line and related communication lines between the Facility and electrical facilities owned by NSP at the NSP Interconnection Point. Lessee shall not plant trees, excavate, install improvements, or otherwise undertake activities within the Transmission Premises which will interfere with Lessee's electric or distribution facilities.
- (d) Prior to construction of the Facility, subject to Section 4.6, Lessee may engage in assessment, development and design activities on the Premises, including, but not limited to (i) feasibility studies, including measurement of sunlight or solar energy potential and other meteorological data; (ii) design, siting and analysis of proposed Facility; and (iii) such other tests, analysis or studies as may be required by permitting agencies or as Lessee deems advisable including analysis of Lessee's electrical system. Lessee may install one or more measuring devices on the Premises as necessary to measure its solar characteristics.
- (e) Lessee reserves the right to relocate or reconfigure the Facility upon the PW Building during the term of this Lease, subject to Lessor's approval if relocation or reconfiguration materially affects the PW Building or its use by Lessor or continuing compliance of the Facility with all requirements of this Lease. Lessor shall retain the right to use that portion of the Premises, PW Building, and Lessor Property not occupied by the Facility to the extent its use is consistent with Sections 1.2 and 5.2, for all purposes. Lessee agrees to cooperate with Lessor to locate the Facility on the Premises in a manner that minimizes interference with the activities of Lessor and the operation of the PW Building. In this respect, Lessor agrees to provide Lessee with any information needed to locate the Facility to reduce the effect on Lessor and the PW Building, including electrical plans, plot layouts, and similar data.
- (f) Lessor shall provide Lessee with copies of the plans and specifications in its possession for the roof and related structural components of the PW Building

necessary for Lessee to design its Facility. Lessor shall not be obligated to create any new plans or specifications. The Facility shall be designed so as to not overload or unduly stress the structural or roof components, or otherwise adversely affect the functionality, of the PW Building and shall comply with all Applicable Laws. Lessor shall have the right to review Lessee's proposed design and specifications in order to identify any potential adverse effects on the PW Building or costs to Lessor and to suggest modifications which will reduce or eliminate such costs or effects.

## **Section 1.2 Solar Easement**

- (a) Lessor hereby grants Lessee an exclusive easement to use all sunlight which naturally arrives at the Premises, including an exclusive easement prohibiting any obstruction to the free flow of sunlight to the Premises throughout the entire area of the Lessor Property described on Exhibit B (the "Easement Premises"), which shall consist horizontally three hundred and sixty degrees (360°) from any point where any photovoltaic generating facility is or may be located at any time from time to time (each such location referred to as a "Solar Site") and for a distance from each Solar Site to the boundaries of the Easement Premises, together vertically through all space located above the surface of the Easement Premises, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the plane from each point along the exterior boundary of the Easement Premises through each Solar Site to each point and on and along such line to the opposite exterior boundary of the Easement Premises. Trees, structures and improvements located on the Easement Premises as of the date of this Lease shall be allowed to remain and Lessee may not require their removal. Lessor may not place or plant any trees, structures or improvements on the Easement Premises after the date of this Lease which may, in Lessee's reasonable judgment, impede, diminish or interfere with the receipt of sunlight at any Solar Site, unless Lessor has received approval from Lessee for installation of any such trees, structure or improvement. In the event Lessor places or plants trees, structures or improvements on the Easement Premises which violate the provisions of this Section 1.2, Lessee may notify Lessor and request removal of the applicable tree, structure or improvement, or modification thereof to comply with this Section 1.2, within thirty (30) days.
- (b) Lessor further grants to Lessee an easement and license for the Facility to create, cause, increase, accentuate, or otherwise contribute to the occurrence of light, shadows, shadow and light flickering, glare and reflection, on and across the Premises and Lessor Property, and Lessor waives and releases any claims or causes of action arising from or related to the occurrence of any such events.

## **ARTICLE II. Lease Term**

**Section 2.1 Lease Term.** The term of this Lease shall commence upon the date it is executed and delivered by both Parties and continue until the date that is twenty-five (25) years from the Commencement Date (as defined below) unless terminated earlier in accordance with its terms (“Term”).

**Section 2.2 Termination of Lease**

The occurrence of any of the following events shall terminate this Lease:

- (a) The expiration of the Term as set forth in Section 2.1; or
- (b) The written agreement of the Parties to terminate this Lease; or
- (c) An uncured material breach of this Lease by either Party and the election of the non-breaching Party to terminate the Lease pursuant to Article IX; or
- (d) Either Lessee or Lessor terminates the Lease pursuant to Section 3.1(a), or Lessee terminates the Lease pursuant to Section 8.1.

**ARTICLE III. Rent and Taxes**

**Section 3.1 Rent**

- (a) Lessee shall pay Lessor an amount annually as Rent for the period of time between the date of this Lease and the Commencement Date as set forth in Exhibit C. The “Commencement Date” shall be the first day of the first full month after the Facility commences commercial production and sale of electricity on the Premises under the PPA. The Commencement Date shall occur prior to December 31, 2016. If the Commencement Date does not occur by that date, except as such period may be extended by Force Majeure or agreement of the Parties, either Lessee or Lessor shall have the option to terminate the Lease, in which case neither Lessee nor Lessor shall have any further obligations under this Lease and Lessee shall have no further obligation to pay Rent to Lessor. All Rent obligations arising under this Lease shall be prorated for any partial year.
- (b) The twelve (12) month periods beginning with the Commencement Date and each anniversary of the Commencement Date shall each be a Lease Year. Beginning with the Commencement Date, Lessee shall pay to Lessor an annual rental payment as set forth in Exhibit D (together with payments due prior to the Commencement Date, “Rent”).

**Section 3.2 Payments**

Lessee shall make the initial payment of Rent for the first year as set forth in Section 3.1(a) within ten (10) days of the Effective Date and on the anniversary date of the Effective Date of the Lease thereafter until the Commencement Date.

Lessee shall pay Lessor Rent for the first full Lease Year no later than ten (10) days after the Commencement Date. On each anniversary of the Commencement Date, Lessee shall pay Lessor the annual Rent due in advance for the following Lease Year.

### **Section 3.3 Taxes, Assessments and Utilities**

- (a) Lessor shall pay, when due, all real property taxes and assessments levied against the Lessor Property and Premises and all personal property taxes and assessments levied against the PW Building or any other personal property on the Lessor Property. Subject to Section 3.3 (c), if Lessor shall fail to pay any such taxes or assessments when due, Lessee may, at its option, pay those taxes and assessments and any accrued interest and penalties, and deduct the amount of its payment from any Rent otherwise due to Lessor from Lessee.
- (b) Lessee shall pay all personal property and other taxes and assessments levied against the Facility when due including any equipment or property within the Access Premises or Transmission Premises. If the Lessor Property or Premises experiences any increase in the amount of real property taxes assessed against it as a result of the installation of the Facility on the Premises, including any reclassification of the Lessor Property or Premises pursuant to Minn. Stat. Section 272.02, subd. 24 (2013) or otherwise, Lessee shall pay or reimburse Lessor an amount equal to the increase caused by the Facility no later than ten (10) days prior to the date each year on which the applicable real estate taxes are due to be paid by Lessor, provided that not less than thirty (30) days prior to such due date Lessor provides Lessee with copies of the applicable current and past statements of real estate taxes payable for the Lessor Property or Premises and any related information demonstrating the increase was caused by the Facility and the amount of the increase.
- (c) Either Party may contest the validity or amount of any levied taxes, assessments or other charges for which each is responsible under this Lease as long as such contest is pursued in good faith and with due diligence and the Party contesting the tax, assessment or charge has paid the obligation in question or established adequate reserves to pay the obligation in the event of an adverse determination.
- (d) Lessee shall pay for all water, electric, telecommunications and any other utility services used by the Facility or Lessee on the Premises.

### **Section 3.4 Interconnection of Electrical Facilities**

Lessee shall interconnect the Facility with NSP at the location and in the manner described in Exhibit B (“NSP Interconnection Point”) unless otherwise required by NSP. Lessee will not be allowed to interconnect with the electrical system of the PW Building or of Lessor on the Lessor Property. As between Lessor and Lessee, Lessee shall be responsible for all costs of designing, procuring,

installing, maintaining and operating any equipment or facilities necessary to interconnect the Facility at the NSP Interconnection Point, and to permit the receipt, transmission, and delivery of the electricity produced by the Facility to NSP. Lessee shall design, install, operate and maintain all interconnection facilities and equipment, meters and other electrical equipment so as to prevent any adverse effect on Lessor, the PW Building or Lessor's operations and activities on the Lessor Property.

### **Section 3.5 Disclaimer of Title to Environmental Attributes**

(a) Lessor agrees that all Environmental Attributes, as defined in Exhibit E, remain the property of Lessee irrespective of whether Lessor consumes or uses any of the electricity generated by the Facility, and Lessor has no title or right to any such Environmental Attributes related to, arising from or associated with the Facility or any electrical capacity or energy created by the Facility.

(b) As between the Parties, any grant, rebate, incentive payment, bill credit, tax credit or any other cash or tax benefit arising from or associated with the installation or ownership of the Facility or the production of energy and capacity by the Facility, shall enure to the exclusive benefit of Lessee, including, but not limited to, any production tax credit or investment tax credit pursuant to 26 U.S.C. Sections 45 and 48 or similar state tax law provisions; the made-in-Minnesota rebates pursuant to Minn. Stat. Section 116C.7791 (2013); the rebates available through NSP's "Solar Rewards" program and bill credits arising under NSP's community solar garden tariffs or program. Lessor shall cooperate with Lessee in any applications for such benefits or credits to the extent Lessor's participation is necessary for eligibility, and if any such program or benefit requires the Lessor to be the recipient, Lessor agrees to assign or reimburse any such amounts received to Lessee.

### **Section 3.7 Community Solar Garden.**

(a) The Parties agree that the Facility is intended to qualify as a community solar garden ("CSG") pursuant to Minn. Stat. Section 216B.1641 (2013), orders of the Minnesota Public Utilities Commission in Docket No. E-002/M-13-867 or related dockets, applicable NSP tariffs, and all related orders, regulations and interpretations, in each case as modified and amended ("CSG Laws"). As a condition precedent to Lessor's obligation to allow commencement of construction of the Facility under this Lease, Lessee shall submit an application to NSP pursuant to the CSG Laws prior to September 25, 2015 for approval of the Facility as a CSG in accordance with the CSG Rules, and shall receive such approval from NSP, including approval of interconnection of the Facility with NSP at the NSP Point of Interconnection prior to \_\_\_\_\_, 2016.

(b) Lessor agrees to cooperate with any application by Lessor for approval of the Facility as a CSG or for interconnection of the Facility by providing information within its possession, custody and control.

(c) Lessee shall seek subscribers to participate in the Facility as a CSG from residential NSP customers residing in Edina, and shall provide a preference for such residents to become subscribers conditioned on the potential subscriber's eligibility under the CSG Rules and execution and delivery of a subscription agreement with Lessee. Subscription agreements with Edina residents shall not require the subscriber to pay the entire cost of the subscription in advance, but shall provide for subscribers to pay for their allocation of bill credits on a monthly basis as such credits are received and in proportion to the amount of credits created and received. Subscription agreements shall also provide for a minimum annual production guarantee and other terms consistent with Lessee's proposal submitted to and selected by Lessor [TBD], and Lessor shall be entitled to review proposed or executed subscription agreements solely to ascertain such consistency. Lessee's subscription agreements with Edina residents shall not be amended or modified after execution and delivery in a manner inconsistent with such proposed terms.

(d) In the event Lessee is unable to fully subscribe the Facility with Edina residents within six months after commencing its subscription marketing, Lessee shall be entitled to accept subscribers from NSP commercial customers located in Edina for another three months and then, if subscription capacity remains unfilled, any other eligible NSP customers.

#### **ARTICLE IV. Lessee's Covenants**

Lessee covenants, represents and warrants to Lessor as follows:

##### **Section 4.1 Liens**

Lessee shall keep the Premises and Lessor Property free and clear of all liens and claims of liens for labor, materials, services, supplies and equipment performed on or furnished to Lessee or the Facility on the Premises, Access Premises, or Transmission Premises, or in connection with Lessee's use of the Premises, Access Premises, or Transmission Premises. Lessee may contest any such lien, but shall post a bond or utilize other available means to remove any lien that is created during the contested proceeding. Lessee agrees to otherwise remove any lien or encumbrance for which it is responsible pursuant to this paragraph within ninety (90) days of the creation of any such lien or encumbrance.

##### **Section 4.2 Permits and Laws**

(a) Lessee and its subcontractors, agents and designees shall at all times comply with all Applicable Laws with respect to Lessee's activities pursuant to this Lease and

shall obtain all permits, licenses and authorizations required to conduct any and all such activities.

- (b) Lessee shall design, construct, install and operate the Facility and any related equipment in accordance with Prudent Electric Industry Practice, all Requirements of Law, any local electrical code, and the requirements of NSP. In particular, Lessee shall comply with all Environmental Laws.

### **Section 4.3 Lessee's Improvements**

- (a) The Facility and related equipment constructed, installed or placed on the Premises and within the Transmission Premises by Lessee pursuant to this Lease shall be the sole property of Lessee, and Lessor shall have no ownership or other interest in the Facility and related equipment owned by Lessee on the Premises or within the Transmission Premises. The Facility is and shall remain personalty of the Lessee, notwithstanding any present or future common ownership of the Facility and the Premises, and irrespective of whether any of the Facility is deemed to be a fixture or otherwise part of the Lessor Property or PW Building, and Lessor acknowledges that the Facility is and shall remain personal property of Lessee irrespective of the manner of its attachment or connection to the Lessor Improvements. Lessor acknowledges that Lenders may request a first priority security interest in the Facility as collateral for financing of the Facility, and Lessor consents to the grant by Lessee of such a security interest, and the filing of instruments necessary to perfect such a security interest under the Uniform Commercial Code in the Facility as personal property of the Lessee.
- (b) Throughout the Term Lessee shall, at its sole cost and expense, maintain Lessee's Facility in good condition and repair, ordinary wear and tear excepted. Any portion of the Facility constructed, installed or placed on the Premises or Transmission Premises by Lessee pursuant to this Lease may be replaced, repaired or refurbished by Lessee at any time. At the end of the Term, including any termination of the Lease, Lessee shall remove the Facility within three (3) months from the date the Term expires or the Lease terminates. If Lessee fails to remove any portion of the Facility within the required time period, that portion of the Facility shall be considered abandoned by Lessee and Lessor may remove that portion of the Facility from the Premises and dispose of it in its sole discretion without notice or liability to Lessee. In the event Lessee fails to remove any of the Facility as required, and Lessor removes any portion of the Facility at Lessor's expense, Lessee shall reimburse Lessor for all reasonable costs of removing that portion of the Facility as required by the Lease, less any salvage or resale value received by Lessor, within thirty days after receipt of an invoice from Lessor.
- (c) Lessee shall use reasonable care in the installation and construction of the Facility so as to avoid damage to the PW Building and Lessor Property and risk of injury to Lessor's employees, customers, tenants, guests and invitees. Lessee shall secure its equipment, interests and supplies during construction, and remove any construction debris on a regular basis.

#### **Section 4.4 Hazardous Wastes**

Lessee shall not use, store, dispose of or release on the Premises or Lessor Property or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessee's activities, any Hazardous Substances, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessor and is in full compliance with all Environmental Laws.

#### **Section 4.5 Insurance**

- (a) Lessee shall obtain and maintain in force the policies of insurance covering the Facility and Lessee's activities on the Premises and Lessor Property at all times during the Term as described in Exhibit D. Such insurance coverage for the Facility, Premises, Access Premises and Transmission Premises may be provided as part of a blanket policy that covers other facilities or properties as well.
- (b) Lessor shall procure and maintain comprehensive general liability insurance or self-insure with respect to the Lessor Property and PW Building, including coverage for property damage and bodily injury or death to any person.

#### **Section 4.6 Notice of Access**

Without limiting or reducing the rights of access granted to Lessee pursuant to the Access Easement and this Lease, to the extent Lessee's access to the Facility can only be accomplished by entry to, on, or through or over the Lessor Property and PW Building, Lessee agrees to give Lessor reasonable notice before any entry in, through or over the Lessor Property or PW Building by Lessee or its agents, employees and contractors. Lessee and its agents, employees and contractors shall comply with any reasonable safety and security instructions of Lessor while present on the Premises, the Access Premises or the Transmission Premises. The Parties will agree on mutually acceptable locations and means by which Lessee may access the Facility and Premises.

#### **Section 4.7 PW Building Roof**

With respect to the roof of the PW Building on which any portion of the Facility is located, Lessee shall be responsible for the costs to repair or replace any roof membrane or other components damaged or adversely affected by installation of the Facility at Lessee's expense. Lessor represents that the roof was installed in 2010 and that the expected life of the current roof is 30 years. In the event that any portion of the roof requires repair or replacement during the Term and the repair or replacement will require the movement or disconnection of any portion of the Facility, Lessor and Lessee agree to cooperate to minimize the dislocation or disconnection of the affected Facility and the duration of any such relocation or disconnection and to use commercially reasonable efforts to schedule such work

for periods when solar energy production is lowest. Rent shall be abated for the period, and to the extent of, any such relocation or disconnection.

## **ARTICLE V. Lessor Covenants**

Lessor covenants, represents and warrants to Lessee as follows:

### **Section 5.1 Title and Authority**

Lessor is the sole owner of the Lessor Property, PW Building, Easement Premises and Premises in fee simple and each person or entity signing the Lease on behalf of Lessor has the full and unrestricted authority to execute and deliver this Lease and to grant the easements and rights granted herein. All persons having any ownership interest in the Lessor Property, PW Building, Easement Premises and Premises are signing this Lease as Lessor. When signed by Lessor, this Lease constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms. There are no encumbrances or liens against the Lessor Property or Premises except as recorded with the County Recorder for Hennepin County. Lessor agrees to deliver any documents necessary to correct any title defects which would, if not corrected, adversely affect Lessee's rights hereunder or its ability to obtain and maintain financing of the Facility.

### **Section 5.2 Quiet Enjoyment**

Lessee shall have the quiet use and enjoyment of the Premises, Easement Premises, Access Premises and Transmission Premises in accordance with the terms of this Lease without any interference of any kind by Lessor or any person claiming through Lessor. Lessor and its activities on the Premises, Access Premises and Transmission Premises and any grant of rights Lessor makes to any other person shall not interfere with any of Lessee's activities pursuant to this Lease, and Lessor shall not interfere with any of Lessee's activities pursuant to this Lease, and Lessor shall not interfere or allow interference with the receipt of sunlight over the Easement Premises or otherwise engage in activities which might impede or decrease the output or efficiency of the Facility, except as otherwise permitted pursuant to this Lease.

### **Section 5.3 Cooperation**

Lessor shall cooperate with Lessee to obtain and maintain any approvals, authorization and permits needed in connection with the analysis, development, construction, maintenance, and operation of the Facility. Lessor shall also provide Lessee with such further assurances and shall execute any estoppels, certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or requested by Lessee or any of its Lenders.

#### **Section 5.4 No Marketing of Environmental Attributes**

Lessor acknowledges that Lessee retains all rights to any Environment Attributes arising from the Facility and the electricity produced by the Facility and that Lessor is not acquiring any rights or interests in any Environmental Attributes pursuant to this Lease. Lessee's Environmental Attributes include all rights to report, market and otherwise receive credit for the creation of electricity using the Facility. Lessor agrees not to publicize, report, market or otherwise take credit for the creation or use of the Environmental Attributes or electricity from the Facility in any manner which would interfere with the Lessee's rights to such Environmental Attributes or diminish the value of Lessee's Environmental Attributes. Lessor and Lessee shall cooperate to identify appropriate public statements which Lessor may use regarding the Facility that will not interfere with Lessee's Environmental Attributes.

### **ARTICLE VI. Indemnification**

#### **Section 6.1 Indemnification**

(a) Each Party (the "Indemnifying Party") agrees to defend, indemnify and hold harmless the other Party and the other Party's elected and appointed officials, officers, directors, employees, representatives, and agents (collectively the "Indemnified Party") against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys' fees ("Damages"), to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Lessor Property or Premises; (ii) any negligent or intentional act or omission on the part of the Indemnifying Party; or (iii) any breach of this Lease by the Indemnifying Party. Nothing in this Section shall relieve Lessor or Lessee of any liability to the other for any breach of the Lease. This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the indemnities but the Indemnifying Party's liability to pay damages to the Indemnified Party shall be reduced in proportion to the percentage by which the indemnities negligent or intentional acts, errors or omissions caused the Damages. Neither Party shall be indemnified for its Damages resulting from its sole negligence or intentional wrongful acts. These indemnity provisions shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy. This indemnification provision shall survive the expiration or termination of this Lease.

(b) Lessee shall indemnify, defend and hold harmless Lessor and its elected and appointed officials, officers, employees and agents against any and all suits, actions, response actions, orders, losses, damages, civil or criminal penalties, fees, costs, expenses, claims or liabilities (including without limitation, attorneys' fees and expenses) arising out of, or in connection with, the release (or alleged release)

of any Hazardous Substances introduced to or handled on the Lessor Property by Lessee or its contractors, suppliers, or agents, or violations (or alleged violations) of any Environmental Laws by the Lessee or its officers, employees, agents, contractors or suppliers, including without limitation, with respect to damage to property, including the costs of investigation, cleanup, removal, remedial, corrective or response action. Notwithstanding the foregoing provisions, Lessee shall not be responsible for any Damages to the extent attributable to Hazardous Substances present on the Lessor Property prior to the Effective Date or introduced or handled by Lessor or its agents, contractors and representatives.

## **Section 6.2 Damage to Lessor Improvements**

In the event Lessor suffers damage to the Lessor Property or any improvements on the Lessor Property during Lessee's construction, installation, operation and maintenance of the Facility on the Premises, Access Premises, and Transmission Premises. Lessee shall reimburse Lessor for the costs to repair or replace any such damage or pay Lessor fair compensation for any such losses or damage.

## **ARTICLE VII. Assignment; Encumbrance of Lease**

### **Section 7.1 Right to Encumber**

- (a) Lessee may at any time mortgage or encumber all or any part of its interest in the Lease and rights under this Lease and/or enter into a collateral assignment of all or any part of its interest in the Lease or rights under this Lease to any entity providing equity or debt financing for the Facility ("Lender") without the consent of Lessor. Any Lender shall have no obligations under this Lease until such time as it exercises its rights to acquire Lessee's interests subject to the lien of Lender's mortgage by foreclosure or otherwise assumes the obligations of Lessee directly. Lessee shall notify Lessor of the identity and notice address for any Lender.
- (b) Lessor and Lessee agree that, once all or any part of Lessee's interests in the Lease are mortgaged or assigned to a Lender, they will not modify or terminate this Lease without the prior written consent of the Lender. Lessee agrees to cooperate with any Lender and agrees to negotiate in good faith with respect to any modifications to this Lease which may be requested by any Lender.
- (c) Lessor agrees that any Lender shall have the right to make any payment and to do any other act or thing required to be performed by Lessee under this Lease, and any such payment, act or thing performed by Lender shall be as effective to prevent a default under this Lease and any forfeiture of any of Lessee's rights under this Lease as if done by Lessee itself.
- (d) During the time all or any part of Lessee's interests in the Lease are mortgaged or assigned to any Lender, if Lessee defaults under any of its obligations and Lessor is required to give Lessee notice of the default Lessor shall also be required to

give Lender notice of the default at the address provided by Lessor pursuant to Section 7.1(a). If Lessor becomes entitled to terminate this Lease due to an uncured default by Lessee, Lessor will not terminate this Lease unless it has first given written notice of the uncured default and of its intent to terminate this Lease to the Lender and has given the Lender at least thirty (30) days to cure the default to prevent termination of this Lease. If within such thirty (30) day period the Lender notifies the Lessor that it must foreclose on Lessee's interest or otherwise take possession of Lessee's interest under this Lease in order to cure the default, Lessor shall not terminate this Lease and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Lessee's interest under this Lease and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Lessee. The time within which Lender must foreclose or acquire Lessee's interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition. The extension of time provided for foreclosure shall not apply to defaults consisting solely of a failure to pay Rent or other amounts due Lessor.

- (e) The acquisition of all or any part of Lessee's interests in the Lease by any Lender through foreclosure or other judicial or non-judicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Lessor nor constitute a breach or default of this Lease by Lessee, and upon the completion of the acquisition or conveyance Lessor shall acknowledge and recognize Lender as Lessee's proper successor under this Lease upon Lender's cure of any existing Lessee defaults and assumption of the obligations of Lessee under this Lease prospectively.
- (f) In the event this Lease is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Lessor agrees, upon request by any Lender within thirty (30) days after the rejection or termination and subject to the continuing qualification of the Facility as a CSG under the CSG Rules, to execute and deliver to Lessee or Lender a new Lease for the Premises which (i) shall be effective as of the date of the rejection or termination of this Lease, (ii) shall be for a term equal to the remainder of the term of the Lease before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Lease (except for any obligations or requirements which have been fulfilled by Lessee or Lender prior to rejection or termination). Prior to the execution and delivery of any such new lease Lessee, or Lender shall (i) pay Lessor any amounts which are due Lessor from Lessee, (ii) pay Lessor any and all amounts which would have been due under this Lease but for the rejection or termination from the date of the rejection or termination to the date of the new lease, (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Lessee under this Lease to the extent Lessee failed to perform them

prior to the execution and delivery of the new lease; and (iv) confirm or reestablish eligibility of the Facility as a CSG under the CSG Rules then in effect.

## **Section 7.2 Assignment**

Lessee may not assign, sublease, transfer or convey any portion of its interests in this Lease without the prior written consent of Lessor, which shall not be unreasonably withheld, conditioned or delayed, except for (i) assignment of its rights in their entirety to an entity created to own and operate the Facility and which is owned by Lessee, and (ii) any collateral assignment to a Lender as set forth in Section 7.1(a). Lessor shall notify Lessee of any such assignment. Any other such purported assignment, sublease, transfer or conveyance without the required consent from Lessor shall be void.

## **Section 7.3 Continuing Nature of Obligations**

- (a) The solar easement and related rights granted by Lessor in this Lease to Lessee are an easement in gross, representing interests personal to and for the benefit of Lessee, its successors and assigns, as owner of the rights created by the easement. The easement and other rights granted by Lessor in this Lease are independent of any lands or estates or interest in lands, there is no other real property benefiting from the solar easement and related rights granted in this Lease and, as between the Premises and other tracts of property, no tract is considered dominant or servient as to the other.
- (b) The burdens of the solar easement and all other rights granted to Lessee in this Lease shall run with and against the Premises and the Easement Premises and shall be a charge and burden on the Premises and the Easement Premises and shall be binding upon and against Lessor and its successors, assigns, permittees, licensees, lessees, employees and agents. The Lease, including the solar easement, shall inure to the benefit of Lessee and its permitted successors, assigns, permittees, licensees and lessees. Lessor acknowledges that any sale or conveyance of the Lessor Property or PW Building shall be subject to the leasehold and easement interests of Lessee in this Lease.

## **ARTICLE VIII. Condemnation/Force Majeure**

### **Section 8.1 Condemnation**

If eminent domain proceedings are commenced against all or any portion of the Premises, and the taking and proposed use of such property would prevent or adversely affect Lessee's construction, installation or operation of the Facility on the Premises or related facilities, the Parties shall either amend this Lease to reflect any necessary relocation of the Facility which will preserve the value and benefit of the Lease to Lessee, together with any corresponding payments, or, at Lessee's option, this Lease may be terminated, provided that any such termination

shall not terminate Lessee's rights to participate in any condemnation proceedings or to any award in its favor as set forth in Section 8.2.

### **Section 8.2 Proceeds**

All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Lessor, except that Lessee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Facility or the loss of any of the Facility or the loss of use of the Premises pursuant to the Lease. Lessee shall have the right to participate in any condemnation proceedings to this extent. Lessee's right to compensation as set forth in this Section 8.2 shall survive the termination of this Lease or the taking by the condemnor of possession of the Premises, Access Premises, Transmission Premises, or Lessor Property.

### **Section 8.3 Force Majeure**

Neither Lessor nor Lessee shall be liable to each other, or be permitted to terminate this Lease, for any failure to perform an obligation of this Lease to the extent such performance is prevented by a Force Majeure, which shall mean an event beyond the control of the Party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided, and includes, but is not limited to, fire, earthquake, flood, hurricane, tornado, war, epidemics, riot or civil strife, strikes or labor disputes, or the action by any governmental authority to prohibit the performance of the applicable obligation for reasons not attributable to the affected Party. The affected Party shall notify the other Party of the occurrence of the Force Majeure and its effect on performance of the Lease and shall take all reasonable efforts to remove or overcome the effects of the Force Majeure preventing performance of its obligations under this Lease.

## **ARTICLE IX. Default/Termination**

### **Section 9.1 Events of Default**

- (a) Subject to Section 7.1, each of the following shall constitute an event of default that shall permit the non-defaulting Party to terminate this Lease or pursue other remedies available at law or equity.
  - (i) any failure by Lessee to pay Rent if the failure to pay continues for thirty (30) days after written notice from Lessor to Lessee and any Lender;
  - (ii) any failure by Lessee to obtain CSG approval from NSP for the Facility by \_\_\_\_\_, 2016 or to maintain the Facility's eligibility under the CSG Rules; or

- (iii) any other material breach of this Lease by either Party which continues for thirty (30) days after written notice of default from the non-defaulting Party or, if the cure will take longer than thirty (30) days, the length of time necessary to effect cure as long as the defaulting Party is making diligent efforts to cure during that time.
- (b) For all claims, causes of action and damages the Parties shall be entitled to the recovery of actual damages allowed by law unless otherwise limited by the Lease. Neither the enumeration of events of default in Section 9.1 nor the termination of this Lease by a non-defaulting Party shall limit the right of a non-defaulting Party to rights and remedies available at law, including, but not limited to, claims for breach of contract or failure to perform by the other Party and for direct damages incurred by the non-defaulting Party as a result of the termination of this Lease.

## **Section 9.2 Surrender**

Upon the termination or expiration of this Lease, Lessee shall peaceably surrender the Premises to Lessor and remove the Facility from the Premises at Lessee's expense as required under Section 4.3 of this Lease.

## **Section 9.3 Specific Performance**

Lessor acknowledges and agrees that should Lessor breach any of its obligations hereunder or otherwise fail to permit Lessee to exercise any of the rights and privileges granted herein, damages would be difficult to calculate and money damages would not be sufficient to compensate Lessee for such breach. As a result, Lessee shall have the right to seek specific enforcement of this Lease. In that event, Lessor agrees that Lessee has no adequate remedy at law.

## **Section 9.4 No Consequential Damages**

Notwithstanding anything to the contrary in this Lease, neither Lessee nor Lessor shall be entitled to, and each of them expressly waives, any and all rights to recover consequential, incidental, punitive, indirect or exemplary damages, including, but not limited to, loss of use, loss of revenues, loss of profit, interest charges, or cost of capital, however arising, whether in contract, tort, equity or otherwise, with respect to any claim, action or damages arising from or in connection with this Lease.

# **ARTICLE X. Miscellaneous**

## **Section 10.1 Notice**

Notices, consents or other documents required or permitted by this Lease must be given by personal delivery, reputable overnight courier, telecopier or U.S.

certified mail postage prepaid and shall be sent to the respective parties as follows:

To Lessor: City of Edina  
\_\_\_\_\_  
\_\_\_\_\_  
( ) \_\_\_\_ - \_\_\_\_\_

To Lessee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
( ) \_\_\_\_ - \_\_\_\_\_

Notice shall be deemed delivered upon receipt or refusal, if personally delivered, upon the date of actually delivery or refusal shown on the courier’s delivery receipt if sent by overnight courier, and on the fourth business day after deposit in the U.S. mail if sent by certified mail. Any Party may change the address for notice by notice to the other Party.

**Section 10.2 No Third Party Beneficiaries**

Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or liability to, any person not a party to this Agreement. Except for the rights of Lenders set forth above, no provision of this Lease is intended to nor shall it in any way inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Lease, or of any one or more of the terms of this Lease, or otherwise give rise to any cause of action in any person not a Party to this Lease.

**Section 10.3 Entire Agreement**

It is mutually understood and agreed that this Lease constitutes the entire agreement between Lessor and Lessee and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representations or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Lease except for the provisions of Lessee’s proposal, dated September \_\_\_, 2015, which are incorporated in this Lease by reference. This Lease may not be amended except in a writing executed by both Parties.

**Section 10.4 Governing Law**

This Lease is made in Minnesota and shall be governed by the laws of the State of Minnesota. This instrument is exempt from Minnesota deed tax.

### **Section 10.5 Cooperation**

Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Lease and to fulfill the obligations of the respective Parties.

### **Section 10.6 Waiver**

Neither Party shall be deemed to have waived any provision of this Lease or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any rights arising in connection with this Lease shall not be deemed a waiver with respect to any subsequent or other matter.

### **Section 10.7 Relationship of Parties**

The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Lease shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Lessor and Lessee or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Lessor and Lessee shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

### **Section 10.8 Severability**

Should any provision of this Lease be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of the Lease shall not be affected and shall continue in full force. The Parties will, however, use their best efforts to agree on the replacement of the void, illegal or unenforceable provisions with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and the Lease as a whole.

### **Section 10.9 Counterparts**

This Lease may be executed in two or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

[Signature pages to follow]





## EXHIBIT A

### Description of Lessor Property, Premises, and Access and Transmission Premises

1. Lessor Property

The Easterly 55 feet of Lot 3, and all of Lots 4, 5, and 6, Block 5, Edina Interchange Center, according to the recorded plat thereof, Hennepin County, Minnesota.

2. Premises

[to be determined]

3. Access Premises

[to be determined]

4. Transmission Premises

[to be determined]

5. Easement Premises [TBD]

[to be determined]

## EXHIBIT B

### NSP Interconnection Point

Interconnection of the Facility with NSP will be [TBD] unless otherwise required by NSP.

EXHIBIT C

RENT

## EXHIBIT D

### INSURANCE

1. Lessee shall procure and maintain throughout the Term, at its own expense, the following policies of insurance:
  - (a) Workers' Compensation and Employer's Liability insurance that complies with the laws of Minnesota to the extent of statutory limits, if applicable including a waiver of subrogation to Lessor;
  - (b) Comprehensive or Commercial General Liability insurance with bodily injury and property damage combined single limits of at least \$2,000,000 per occurrence. Such insurance shall include, but not necessarily be limited to, specific coverage for contractual liability encompassing the indemnification provisions in this Lease, broad form property damage liability, personal injury liability, explosion and collapse hazard coverage, and products/completed operations liability coverage;
  - (c) Comprehensive automobile liability insurance to the extent applicable with bodily injury and property damage combined single limits of at least \$1,000,000 per occurrence covering vehicles owned, hired, or non-owned; and
  - (d) All other insurance required by Applicable Laws as deemed appropriate by Lessee.
2. All policies of insurance required hereunder shall be with an insurer authorized by law to do business in Minnesota. All insurers shall be issued from companies satisfactory to Lessor and have a rating of A- or better in the current A.M. Best Rating Guide.
3. The amounts of insurance required above may be satisfied by Lessee buying primary coverage in the amounts specified or by buying a separate excess umbrella liability policy together with the lower limit primary underlying coverage. The structure of the coverage is Lessee's option, as long as the total amount of insurance meets the requirements of this Lease.
4. The policies required of Lessee shall be "occurrence" form policies. Lessee may not use "claims-made" form coverage to meet its obligations without the prior written consent of each such policy from Lessor.
5. Lessee's Commercial General Liability policy and Umbrella or Excess Liability policies shall include each of the following endorsements, and its workers' compensation and automobile liability policies shall include endorsement (d) listed below:
  - a. The City of Edina and its elected and appointed officials, directors, officers, employees and agents shall be additional insureds under all policies including ongoing operations and completed operations.

- b. The policies are to be primary with respect to the interest of the City of Edina, and its elected and appointed officials, directors, officers, employees and agents, and any other insurance maintained by any of them shall be excess and not contributory with Lessee's insurance.
  - c. Each insurer shall waive all rights of subrogation against the City of Edina and its elected and appointed officials, directors, officers, employees, and agents.
  - d. Notwithstanding any other provision of a policy, no policy shall be cancelled or changed in a material way by the insurer or expire without thirty (30) days prior written notice to Lessor.
  - e. Each insurer shall expressly agree that (i) the procurement of the applicable policy and the inclusion of the City of Edina and other persons listed in Section 5(a) as additional insureds does not waive any of the defenses of governmental immunity available under Minnesota law as it now exists and as it may be amended in the future; (ii) the City of Edina shall be responsible for asserting any defense of governmental immunity and may do so at any time, including upon the timely request of the applicable carrier; and (iii) the insurance carrier shall not deny coverage under any policy nor deny any of the rights and benefits accruing to the City of Edina and other additional insureds under the applicable policy due to the availability of a governmental immunity defense unless and until a court of competent jurisdiction has confirmed the applicability of governmental immunity asserted by the City of Edina in a non-applicable final order or judgment.
6. Lessee or its insurers or agents shall provide Lessor with certificates of insurance evidencing the policies and endorsements described prior to commencing any physical activities on the Lessor Property. Failure to obtain the insurance coverage required shall in no way relieve or limit Lessee's obligations and liabilities under other provisions of this Agreement.
7. If the Facility is destroyed or materially damaged, and there are sufficient insurance proceeds available to repair or replace the Facility, Lessee shall use such proceeds to cause the Facility to be rebuilt and placed in commercial operation as soon as practicable.

## EXHIBIT E

### Defined Terms

The terms defined below, when capitalized and used in the Lease, shall have the meanings given to them in this Exhibit E.

1. **Applicable Laws:** All applicable laws, statutes, treaties, codes, ordinances, regulations, orders, licenses, permits, and rules of any governmental authority, now in effect or enacted in the future, as amended, and as interpreted and applied, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, and awards.
  
2. **Environmental Attributes:** All attributes of an environmental or other nature that are created or otherwise arise from the Facility, generation of electricity using sunlight as a source of energy, either in its own right or in contrast to the generation of electricity using nuclear or fossil fuels or resources, including, but not limited to, tags, certificates or similar products or rights associated with solar energy as a “green” or “renewable” energy resource, including any and all environmental air quality credits, emissions reductions, allowances, offsets or other benefits related to the use of solar energy at the Lessor Property in a manner which reduces, displaces or offsets emissions resulting from fuel combustion pursuant to any existing or future international, federal, regional, state or local legislation, regulation or agreement or voluntary agreement, and the aggregate amount of credits, offsets or other benefits related to any environmental or renewable energy credit trading program, information system or tracking system associated with the energy generated from the Facility, and any credits, allowances, offsets, or emission or pollution reductions for substances such as mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter, or other contaminants or air, water or soil under federal, state, regional or local law or any international regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol and similar or successor programs, agreements, laws and regulations. “Environmental Attributes” does not include investment tax credits, or any similar tax credits, or cash grants, production incentives or similar tax or cash benefits, whether or not such tax credits or cash benefits arise from or are related to the Facility’s use or generation of solar energy.
  
3. **Environmental Law:** Any federal, state and local laws, including statutes, regulations, rulings, orders, administrative interpretations and other governmental restrictions and requirements, relating to the production, handling, release, discharge, treatment or disposal of air pollutants, water pollutants, process waste water, Hazardous Substances, toxic substances or otherwise relating to the natural environment or natural resources, each as amended from time to time, including, but not limited to (i) the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; (ii) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.; (iii) the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901 et. seq.; (iv) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; (v) the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601 et seq.; (vi) Occupational Safety and Health Act of 1970; (vii) the Emergency Planning

and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; and (viii) any other similar applicable federal, state or local law.

4. Hazardous Substance: (A) Any substance which is listed, defined, designated or classified under any Environmental Law as a (i) hazardous material, substance, constituent or waste, (ii) toxic material, substance, constituent or waste, (iii) radioactive material, substance, constituent or waste, (iv) dangerous material, substance, constituent or waste, (v) pollutant, (vi) contaminant, or (vii) special waste; (B) any material, substance, constituent or waste regulated under any Environmental Laws; or (C) petroleum, petroleum products, radioactive materials, polychlorinated biphenyl, pesticides, asbestos, or asbestos-containing materials.

5. NSP: Northern States Power Company, a Minnesota corporation, and its successors and assignees.

6. PPA: Any contract or agreement or other arrangement pursuant to which Lessee sells the electricity and related capacity to NSP or any other purchaser.

7. Prudent Electric Industry Practice: Those methods and that equipment, as changed from time to time, that are commonly used and accepted in electrical engineering and operations to operate electrical equipment lawfully and with safety, dependability and efficiency, including, but not limited to, the requirements of the National Electric Safety Code, the National Electrical Code, NSP, and any Requirement of Law.