

**AMENDED AND RESTATED POWER PURCHASE AGREEMENT**  
**relating to**  
**CONTRACTS FOR COGENERATION AND**  
**SMALL POWER PRODUCTION FACILITIES**

This Amended and Restated Power Purchase Agreement ("**Agreement**"), dated as of \_\_\_\_\_ ("**Contract Date**"), is entered into by and between Southern Minnesota Municipal Power Agency ("**Agency**"), a municipal corporation and political subdivision of the state of Minnesota and \_\_\_\_\_, Minnesota ("**Member**"), a municipal corporation and political subdivision of the state of Minnesota and a member of the Agency (Agency and Member are each a "**Party**" and together are the "**Parties**").

**RECITALS:**

A. Pursuant to the second paragraph of Section 3(a) of the Power Sales Contract between Member and the Agency, the Parties agreed that they would use best efforts to arrange for purchases of power required of Member under the Public Utility Regulatory Policy Act, 16 U.S.C. § 2601 (including the Minnesota implementation thereof in Minnesota Statutes Section 216B.164 and Minnesota Rules Chapter 7835, "**PURPA**") to be made by the Agency. If such arrangements cannot be made, Member is to purchase the power and resell the same to the Agency.

B. Minnesota's implementation of PURPA specifies standard forms of contract to be used in purchases from a Qualified Facility ("**QF**") with capacity of less than 40 kilowatts ("**kW**") ("**Under 40 kW QF(s)**"), all as defined under PURPA, which contemplate that the purchaser of such power also provides power and energy to the QF. It is deemed infeasible for the Agency to assume such a role.

C. In light of the above, the Agency and Member are parties to a Power Purchase Agreement relating to purchases from Under 40 kW QFs and dated as of \_\_\_\_\_, (the "**Existing Power Purchase Agreement**").

D. The Agency and Member desire to revise the terms and conditions of the Existing Power Purchase Agreement, among other things, to also apply to purchases by Member from QFs that are (i) owned by Member's retail customer, and (ii) have capacity 40 kW and above ("**40 kW and Above QF(s)**") and (iii) for which the Agency has determined that it is not feasible for the Agency to make such purchase directly.

**NOW THEREFORE**, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and adequacy of which is hereby mutually acknowledged, the Parties hereto do hereby mutually agree as follows:

1. **QF Contracts.** Member may enter into one or more contracts that meet all requirements of PURPA and any Member rules relating to such purchase (a) for Under 40 kW QFs

using (i) the Uniform Statewide Contract (the “**Uniform Contract**”) promulgated under Minnesota Rules 7835.9910, as of the date hereof, or (ii) another form consistent therewith and with the Power Sales Contract and determined by the Agency to be economically identical to the Uniform Contract for purposes relevant to this Agreement (the “**Alternate Uniform Contract**”) and (b) for 40 kW and Above QFs (together with the Uniform Contract and the Alternate Uniform Contract, the “**QF Contract(s)**”) so long as the Agency has determined that, notwithstanding the best efforts of Member and the Agency, it is not feasible for the Agency to purchase the power directly as contemplated in Section 3(a) of the Power Sales Contract. After entering into any QF Contract, Member shall promptly notify the Agency of the key terms of the contract (*i.e.*, the identity of the QF and the billing rate selection) and provide the Agency with a copy of each QF Contract entered into with a 40 kW and Above QF.

2. Term. The term of this Agreement shall commence on the date hereof and continue thereafter from calendar year to calendar year unless terminated by at least 90 days written notice from either Party to the other (The effective date of such termination being the “**Termination Date**”). No such termination shall excuse either Party from its continuing obligations under Section 3(a) of the Power Sales Contract.

3. Application of this Agreement. Except as set forth on the attached Exhibit A – Excluded Contracts or as otherwise agreed to by Member and the Agency, this Agreement shall apply to all present and future QF Contracts between Member and a QF which is a customer of Member provided that (a) in the event that PURPA (or Member’s rules in implementation thereof) is changed so that Member is not required to enter into such contracts or the terms of such standard contract are changed, at the option of either Party this agreement shall not apply to QF Contracts thereafter entered into (however Section 3(a) of the Power Sales Contract shall continue to apply to such future QF Contracts) and (b) as to QF Contracts to which this Agreement does apply, it shall continue to apply until the earliest of (i) the termination of the applicable QF Contract, (ii) the Termination Date or (iii) the expiration or earlier termination of the Power Sales Contract.

4. Power and Energy Sold to the Agency. All power and energy delivered by the QF to Member shall be deemed sold by Member to the Agency; provided, however, that, if Member has elected to limit the maximum amount of power to be purchased from the Agency under its Power Sales Contract to its Contract Rate of Delivery and such election is in effect, the provisions of Section 21 below shall apply.

5. Metering. Member shall install for each QF, or cause the QF to install, a meter that will measure and store energy input and output in 15 minute intervals for purposes of the QF Contract, this Agreement and the Power Sales Contract; provided, however, that the requirement for 15 minute interval metering shall not apply (i) to Under 40 kW QFs that elect to be paid for its energy using the average retail utility energy rate (as described in Section 8(b) below) or (ii) if the Agency and Member mutually agree that the Net Energy Flow (as defined in Section 6 below) from the QF to Member is anticipated to be negative. Where the QF elects that its entire generation be deemed to be made available to Member, such generation shall be metered in a separately identifiable manner. Where remote reading meters are used, Member will make reasonable efforts, in cooperation with the Agency, to use meters compatible with the Agency’s meter reading system software. In the absence of remote meter reading capabilities, Member shall read the meter at the end of each Agency billing month and forward the electronic data, (all in a form compatible with

the Agency's power accounting system software) to the Agency via email within two business days of the end of the Agency billing month. Member shall have the option to bill the Agency, at mutually agreed rates, for additional meter reading costs which result solely from the need to supply the data to the Agency.

6. QF Energy Measurement. QF metering information shall be reported to the Agency depending upon capacity size of the QF as follows:

- a. For each 40 kW and Above QF, the net energy (the "Net Energy Flow") supplied by Member to the QF (a negative amount) or by the QF to Member (a positive amount) shall be determined for the applicable Agency billing period. Where the QF elects that its entire generation be deemed to be made available to Member, the entire output of its generation (the "QF Generation Flow") also shall be determined for the applicable Agency billing period.
- b. For each Under 40 kW QF, metering information for the prior calendar year shall be reported to the Agency before January 15 each year in the format set forth in Exhibit B. Specifically, each Member shall submit to the Agency a report of each Under 40 kW QF with a positive Net Energy Flow from QF to Member (*i.e.*, net export of energy) in any month, including the amount exported (in kilowatt hours) and Member's payment to the QF for the exported energy.

7. Coincident Peak Capacity. The coincident peak net output from the QF to Member (the "CP Capacity") shall be determined each Agency billing period at the times and in the manner used to determine Member's capacity charges under the Power Sales Contract based upon the metering information for all QFs with meters capable of measuring and storing hourly input and output data. If the coincident peak net output from the QF to Member is negative, the CP Capacity shall be 0.

8. Payment by the Agency to Member. The Agency shall reimburse Member for any payments actually made by Member to a QF, based on the capacity size of the QF and the QF's selected rate option.

- a. For purposes of this Section, the following definitions shall apply: the "Agency Capacity Rate" shall be the Capacity Cost set forth in Schedule 4 - Average Incremental Cost, which shall be updated annually, distributed to Member no later than January 31 of each year, and be effective for the next consecutive 12 months ("Schedule 4"), and the "All-In Wholesale Rate" shall be determined by dividing the Agency's total annual cost of operation by the total kilowatt hours sold by the Agency.
- b. If the QF is on the average retail utility energy rate, the following reimbursement payments shall be made for the energy and capacity from the QF:
  - i. If the Net Energy Flow for an applicable billing period is zero or negative, no payment shall be made by the Agency for the energy or the capacity from the QF.

- ii. If the Net Energy Flow for such billing period is positive, the Agency shall pay Member for the amount of such Net Energy Flow at the energy rate Member is paying the QF under the QF Contract.
- c. If the QF is on a kilowatt-hour roll-over credits rate and credits remaining at the end of the year expire, no reimbursement payments shall be made by the Agency because Member is not making any payment to the QF.
- d. If the QF is on the simultaneous purchase and sale billing rate or the time-of-day purchase rates, the following payments shall be made for the energy and capacity from the QF:
  - i. If the QF is on the simultaneous purchase and sale billing rate, the Agency will pay Member for the QF Generation Flow, which Member has purchased from the QF, as measured on-peak or off-peak, at the Agency's seasonal Estimated Marginal Energy Cost as set forth in Schedule 4.
  - ii. If the QF is on the time-of-day purchase rates (applicable to all 40 kW and Above QFs), the Agency will pay Member for the positive Net Energy Flow, which Member has purchased from the QF, as measured on-peak or off-peak, at the Agency's, seasonal Estimated Marginal Energy Cost as set forth in Schedule 4.
  - iii. If the QF elects the simultaneous purchase and sale billing rate and provides firm power, it is entitled to receive a capacity payment for an applicable billing period under the QF Contract. Under such circumstances, the Agency will pay Member a capacity payment equal to the product of the Agency Capacity Rate divided by all hours in the applicable billing period multiplied by the QF Generation Flow during the applicable billing period.
  - iv. If the QF is on the time-of-day purchase rates and provides firm power, it is entitled to receive a capacity payment for an applicable billing period under the QF Contract. Under such circumstances, the Agency will pay Member a capacity payment equal to the product of the Agency Capacity Rate divided by the number of on-peak hours in the applicable billing period multiplied by the Net Energy Flow of the QF during on-peak hours in the applicable billing period.
- e. Unless otherwise agreed, such sums payable for QF capacity and energy by adjustment to Member's bill from the Agency under the Power Sales Contract shall be:
  - i. monthly with respect to transactions involving 40 kW and Above QFs;
  - ii. annually, consistent with Section 6(b) above, with respect to transactions involving Under 40 kW QFs.

9. Adjustments to Member's Bill. Member's bill under the Power Sales Contract shall be adjusted as set forth below but shall be modified as necessary to give effect to Section 21

below, if Member has elected to limit the maximum amount of power to be purchased from the Agency under its Power Sales Contract to its Contract Rate of Delivery and such election is in effect.

- a. In January of each year, the following adjustments will be made to Member's bill under the Power Sales Contract to address monthly transactions involving Under 40 kW QFs for the prior 12 months.
  - i. For QFs on the average retail utility energy rate or roll-over credits rate, if the monthly Net Energy Flow from the QF for an Agency billing period is:
    - A. zero or negative, no adjustment shall be made to the metered energy of Member under the Power Sales Contract (notwithstanding that energy from the QF may have been sold to the Agency at one time and the Agency may have provided an equal amount of energy to Member at another time during such billing period);
    - B. positive, the Net Energy Flow exported to Member's system will be added to the Member's bill at the All-In Wholesale Rate.
  - ii. For QFs on the simultaneous purchase and sale billing rate, the QF Generation Flow exported to Member's system will be added to the metered energy (on-peak or off-peak, as measured) of Member's bill, and the CP Capacity of the QF will be added to Member's metered demand at the times used to determine demand charges under the Power Sales Contract
  - iii. For purposes of billing, amounts due from Member for billing adjustments made under Paragraphs (a)(i) and (ii) of this Section 9 shall be netted against reimbursement payments due from the Agency to Member under Section 8.
- b. Each month, the following adjustments will be made to Member's bill under the Power Sales contract to address transactions involving 40 kW and Above QFs.
  - i. The Net Energy Flow exported to Member's system will be added back to the metered energy (on-peak or off-peak, as measured) of Member's bill.
  - ii. The CP Capacity of the QF will be added to the Member's metered demand at the times used to determine demand charges under the Power Sales Contract.

Illustrative examples of the adjustments are set forth in Exhibit C.

10. Notices. Any notices, elections, demands or requests required or authorized by this Agreement, or any other instrument or document or information required to be tendered or delivered by a Party, shall be in writing and personally delivered or sent by certified mail, return receipt requested, postage prepaid, or by facsimile (confirmed by regular mail) to:

- (a) If to the Agency at

500 First Avenue SW  
Rochester, Minnesota 55902-3303  
Attention of the Executive Director & CEO  
Facsimile number: (507) 292-6413  
Electronic Mail: \_\_\_\_\_, and

(b) If to Member at

\_\_\_\_\_  
\_\_\_\_\_  
Attention of the General Manager  
Facsimile number:  
Electronic Mail:

Either Party may change these addresses upon providing notice to the other Party. Any notice given hereunder shall be deemed to be given upon the earlier of (a) actual receipt or (b) three days after deposit in a properly addressed envelope in the U.S. mail, postage prepaid, certified mail, return receipt requested.

11. No Rights of Third Parties. This Agreement is intended for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to, any person not a party to this Agreement.

12. Subject to Applicable Laws. This Agreement is subject to applicable laws including applicable federal, state and local laws, ordinances, rules and regulations. Nothing herein contained shall be construed as a waiver of any right to question or contest any such law, ordinance, rule or regulation or asserted regulatory jurisdiction.

13. No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon any Party. No Party shall have any right, power or authority to enter in any Agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

14. Amendment. This Agreement may be amended only upon written agreement of the Parties.

15. No Waiver. Failure of a Party to insist, on any occasion, upon strict performance of this Agreement shall not be a waiver of the right to insist upon strict performance of any provision on any other occasion.

16. Captions. The captions of the various articles and sections of this Agreement are for convenience and reference only and shall not limit or define any of the terms and provisions hereof.

17. Choice of Laws. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

18. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invited or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

19. Power Sales Contract. The Power Sales Contract is a separate and distinct agreement between the Agency and Member, although the Agency and Member agree that the point of metering for the QF under this Agreement shall be deemed to be a Point of Delivery under the Power Sales Contract. In all other respects the Parties do not intend this Agreement to amend or modify the Power Sales Contract. In the event that this Agreement is terminated, the Power Sales Contract shall remain in full force and effect.

20. Existing Power Purchase Agreement. This Agreement amends and restates in its entirety the Existing Power Purchase Agreement. The obligations of the Member and the Agency incurred under the Existing Power Purchase Agreement shall continue under this Agreement and shall not be terminated, extinguished or discharged but shall hereafter be governed by the terms of this Agreement.

21. CROD Provisions. Section 3 of the Power Sales Contract provides that a Member may elect to limit the maximum amount of power purchased from the Agency to a “**Contract Rate of Delivery**” or “**CROD**”. If Member has elected to establish a CROD and such election is in effect, the following modifications shall apply to the foregoing provisions:

a. Definitions:

- i. “**Customer Generation**” shall mean all power and energy from any QFs and any other Member customer-related generation that is sold in whole or in part to the Agency.
- ii. “**Metered Base Demand**” shall mean the total hourly demand of Member from the Agency as measured under the Power Sales Contract but before any addition for power and energy from any Customer Generation (or if any Customer Generation is included in such measurement, reduced by such Customer Generation).

b. Section 4 Power and Energy Sold to the Agency above shall be amended to read: “That portion of the power and energy delivered by the QF to Member which, when added to the Metered Base Demand, does not cause Member’s load to exceed its CROD shall be deemed sold by Member to the Agency.”

c. When computing the amount of Net Energy Flow for which the Agency will pay Member under Paragraphs (b)(ii) Section 8, and which will be added to Member’s metered energy under Paragraph (a)(i)(B) of Section 9, the sum of all total energy exported by all Under 40 kW QFs subject to average retail rates or kilowatt-hour roll-over credit rates shall be multiplied by a fraction, the numerator of which is the total annual energy purchased from the Agency by Member, and the denominator of which is the total annual energy consumed by Member.

- d. When computing the amount of QF Generation Flow, Net Energy Flow, or CP Capacity value for which the Agency will pay Member under Paragraph (d) of Section 8 and which will be added to Member's metered energy and metered demand under Paragraphs (a)(ii), (b)(i) or (b)(ii) of Section 9:
  - i. When Member's Metered Base Demand plus all Customer Generation exceeds Member's CROD, any energy delivered in either direction in excess of Member's CROD shall be excluded. In such cases, Member's CROD will be used for purposes of calculating demand charges.
  - ii. When Member's Metered Base Demand plus all Customer Generation does not exceed Member's CROD, all metered hourly QF Generation Flow, Net Energy Flow, or CP Capacity of the QF(s) at the times used to determine demand charges, as applicable, for the applicable billing period, shall be included.

[The next page is the signature page.]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above.

**SOUTHERN MINNESOTA  
MUNICIPAL POWER AGENCY**

**CITY OF \_\_\_\_\_, MINNESOTA**

By \_\_\_\_\_  
David P. Geschwind,  
Executive Director and CEO

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

Attest \_\_\_\_\_

And/or Attest \_\_\_\_\_

Name and Title

Name and Title

**Exhibit A:**  
**EXCLUDED QF CONTRACTS**

**EXHIBIT B:  
SAMPLE SMMPA 2019 MEMBER DER NET EXPORT REPORT UNDER SECTION 6(b) (QF Energy Measurement)**

Customer ID	JAN kWh	JAN \$	FEB kWh	FEB \$	MAR kWh	MAR \$	APR kWh	APR \$	MAY kWh	MAY \$	JUN kWh	JUN \$	JUL kWh	JUL \$	AUG kWh	AUG \$	SEP kWh	SEP \$	OCT kWh	OCT \$	NOV kWh	NOV \$	DEC kWh	DEC \$	TOTAL kWh	TOTAL \$
Customer 1	0	\$-	0	\$-	0	\$-	0	\$-	20	\$2.60	40	\$5.20	50	\$6.50	20	\$2.60	0	\$-	0	\$-	0	\$-	0	\$-	130	\$16.90
Customer 2	100	\$13.00	125	\$16.25	130	\$16.90	150	\$19.50	170	\$22.10	200	\$26.00	300	\$39.00	190	\$24.70	100	\$13.00	75	\$9.75	125	\$16.25	50	\$6.50	1,715	\$222.95
Customer 3	0	\$-	0	\$-	0	\$-	0	\$-	10	\$1.30	15	\$1.95	20	\$2.60	15	\$1.95	10	\$1.30	4	\$0.52	0	\$-	0	\$-	74	\$9.62
<b>TOTAL</b>	<b>100</b>	<b>\$13.00</b>	<b>125</b>	<b>\$16.25</b>	<b>130</b>	<b>\$16.90</b>	<b>150</b>	<b>\$19.50</b>	<b>200</b>	<b>\$26.00</b>	<b>255</b>	<b>\$33.15</b>	<b>370</b>	<b>\$48.10</b>	<b>225</b>	<b>\$29.25</b>	<b>110</b>	<b>\$14.30</b>	<b>79</b>	<b>\$10.27</b>	<b>125</b>	<b>\$16.25</b>	<b>50</b>	<b>\$6.50</b>	<b>1,919</b>	<b>\$249.47</b>

**CALCULATION**

TOTAL NET EXPORT PAYMENT TO RETAIL CUSTOMERS:	\$249.47	(From AA7 - sum of all payments made to retail customers for net exports for all months in this calendar year for this SMMPA member)
TOTAL NET kWh NET EXPORT	1,919	(From Z7 - sum of all net export kWh for all retail customers with DER of less than 40 kW for all months in this calendar year for this SMMPA member)
SMMPA 2019 ALL-IN WHOLESAL RATE/kWh	\$0.074740	(All-In Wholesale Rate as defined in Section 8(a))
ALL-IN WHOLESAL VALUE OF NET EXPORT	\$143.43	(F13 x F14)
NET PAYMENT TO MEMBER	\$106.04	(F12 - F15 - credit to be added to 2020 February SMMPA wholesale invoice to this SMMPA member)

**EXHIBIT C:**  
**SAMPLE CALCULATIONS UNDER SECTION 9 (Adjustments to Member's Bill)**

**Scenario #1:** QF has capacity under 40 kW and has chosen average retail utility energy rate or roll-over credits rate.

- QF has a net export for the billing period of 100 kWh
- Member pays QF the utility average rate, \$0.10 for this example –  $100kWh * \frac{\$0.10}{kWh} = \$10.00$
- SMMPA reimburses member \$10.00
- Member pays SMMPA's "All-In Wholesale Rate" –  $100kWh * \frac{\$0.07474}{kWh} = \$7.47$

Therefore, SMMPA pays Member  $\$10.00 - \$7.47 = \mathbf{\$2.53}$

**Scenario #2:** QF has capacity under 40 kW and has chosen simultaneous purchase and sale billing rate.

- Customer exports 1000kWh on-peak, 5 kW of which is on the hour of the coincident peak (all power produced by QF is exported).
- SMMPA purchases at on-peak seasonal avoided cost –  $1000kWh * \frac{\$0.02641}{kWh} = \$26.41$
- 1000kWh is added to Member's bill –  $1000kWh * \frac{\$0.05563}{kWh} = \$55.63$
- 5 kW is added to Member's bill demand charge –  $5 kW * \frac{\$10.95}{kW} = \$5.95$

Therefore, Member pays SMMPA  $\$55.63 + \$5.95 - 26.41 = \mathbf{\$35.17}$

**Scenario #3:** QF capacity is equal to or greater than 40 kW and is on time-of-day purchase rates.

- Customer exports 100kWh on-peak during the summer 5 kW of which is on the hour of the coincident peak.
- Member purchases 100kWh at seasonal average incremental cost –  $100kWh * \frac{\$0.02641}{kWh} = \$2.64$
- SMMPA reimburses member \$2.64
- 100kWh is added to Member's bill –  $100kWh * \frac{\$0.05563}{kWh} = \$5.56$
- 5 kW is added to Member's bill demand charge –  $5 kW * \frac{\$10.95}{kW} = \$5.95$

Therefore, Member pays SMMPA  $\$5.56 + \$5.95 - 2.64 = \mathbf{\$8.87}$