

## GRANT CONTRACT TERMS AND CONDITIONS [PRODUCTION]

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**THIS GRANT CONTRACT** is made this \_\_\_\_ day of \_\_\_\_, 20\_\_, by and between Northern States Power Company, a Minnesota corporation (“NSP”), with its principal place of business at 414 Nicollet Mall, Minneapolis, Minnesota 55401 and \_\_\_\_\_ (“Contractor”) \_\_\_\_\_, a [State] \_\_\_\_\_ [corporation, LLC, etc.], with its principal place of business at \_\_\_\_\_. NSP and Contractor are sometimes individually referred to as a “Party” or collectively as the “Parties”.

**WHEREAS**, Contractor intends to design, build, own and operate an electric generating facility project to be located in the vicinity of \_\_\_\_\_, consisting of \_\_\_\_ number of generators with a total nameplate capacity of not more than \_\_\_\_ megawatts (“MWs”), which will be interconnected with NSP’s electric system and will produce renewable energy which may be sold to NSP. A description of the Project, which is the subject of this Grant Contract, is provided in this Grant Contract and Exhibits hereto;

**WHEREAS**, NSP and Contractor intend to fund the Contractor’s electric generating Project utilizing Renewable Development Fund (“RDF”) grant funds pursuant to Minnesota Statutes Section 116C.779 in accordance with the terms and conditions of this Grant Contract and Exhibits hereto; and

**WHEREAS**, Contractor may choose to enter into a power purchase agreement with NSP for the sale of the output of such facility or choose to otherwise utilize the output from the generating facility all as more fully described in the applicable Renewable Development Fund Request for Proposals.

**NOW, THEREFORE**, in consideration of the premises and mutual obligations set forth herein, the Parties agree as follows:

### 1. DEFINITIONS

- A. **Contractor** has the meaning set forth in the opening paragraph of this Grant Contract.
- B. **Date**.
  - 1) **Grant Contract Start Date** shall be the date first listed above.
  - 2) **Grant Contract End Date** is the last date reimbursable expenses can be incurred, and shall be the earliest of 1) completion of the Project; 2) the Scheduled Completion Date indicated on Exhibit C; or 3) the date on which the Grant Contract has been terminated in accordance with this Grant Contract.
- C. **Facility** is the physical generator and all appurtenant equipment and facilities necessary for the production of energy and capacity and delivery of such energy and

capacity that is being developed, constructed and placed into service as part of the Project.

- D. **Project** refers to the scope of work arising from the selected proposal as described in Exhibit A. The scope of work to be included in Exhibit A is derived from the scope of work described in the proposal. Exhibit A may be modified only by mutual agreement between authorized representatives of both Parties.

E. ***Terms Relating to Data***

- 1) **Technical Data** or **Data** as used in this Grant Contract means recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research; document experimental, developmental, demonstration, or engineering work; or be usable or used to define a design or process; or to procure, produce, support, maintain, or operate material. The Data may be graphic or pictorial delineation in media such as drawings or photographs, test specifications or related performance or design type documents or computer software (including computer programs, computer software databases, and computer software documentation). Examples of Technical Data include manufacturing techniques and methods, machinery, devices such as tools, products, or components, research and engineering, engineering drawings and associated lists, specifications, engineering calculations, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical Data as used herein does not include financial reports, cost analyses and other information incidental to Grant Contract administration.
- 2) **Business Information** is information about the operation of a specific business. It includes information concerning the cost and pricing of goods, supply sources, cost analyses, characteristics of customers, books and records of the business, sales information including mailing lists, customer lists, business opportunities, information regarding the effectiveness and performance of personnel, and information incidental to Grant Contract administration.
- 3) **Public Information** is information previously published, generally available from more than one source, or information in the public domain. All air monitoring and emission Data included in a proposal or requested through a Grant Contract are public information.
- 4) **Confidential Information** is Technical Data or Business Information Contractor has satisfactorily identified, which is not otherwise public and which the Parties agree is appropriately treated as confidential.
- 5) **Proprietary Data** is such Data Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Grant Contract or produced by Contractor or its

subcontractors at its own expense, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Grant Contract is commenced.

- 6) **Trade Secret** is any formula, plan, pattern, process, tool, mechanism, compound, procedure, source code, software, database, production Data, or compilation of information which is not patented and which is generally known only to certain individuals with a commercial concern who may be using it to fabricate, produce or compound an article of trade or a service having commercial value and which gives its owner or user an opportunity to obtain a business advantage over competitors who do not know or use it.
- 7) **Generated Data** is that Data that Contractor collects, collates records, deduces, reads out or postulates for use in the performance of this Grant Contract. In addition, any electronic Data processing program, model or software system developed or substantially modified by Contractor in the performance of this Grant Contract using RDF funds, together with complete documentation thereof, shall be treated as Generated Data.
- 8) **Deliverable Data** is that Data which, under the terms of this Grant Contract, is required to be delivered to NSP.
- F. **Project Manager** shall be designated by the Contractor as the administrator of the Project, and who will be responsible, on behalf of Contractor, for managing the completion of task deliverables and milestones as set forth in Exhibit C. Project Manager is also the designate to be noticed as provided in Exhibit D.
- G. **Proposal** shall mean Contractor's proposal as approved by the Commission and attached hereto as Exhibit J.
- H. **Renewable Development Fund Advisory Group** or **Advisory Group** shall mean the current advisory group to the Renewable Development Fund as constituted from time to time.

Certain other terms are defined elsewhere in this Grant Contract.

## 2. CONTRACT TERM

The term of this Grant Contract shall be from the Contract Start Date to the Contract End Date. This Grant Contract is of no force or effect until it has been signed by both Parties. In the event that the Project has not been completed within three (3) years of the originally scheduled Contract End Date, this Grant Contract shall automatically be terminated, subject to the provisions of Section 16 hereof, and further subject to the rights of NSP hereunder to exercise all rights and remedies hereunder for any Event of Default by Contractor that may have occurred prior thereto at any time as permitted by this Grant Contract. Contractor and NSP acknowledge that this Grant Contract shall be effective as of the Contract Start Date but that any obligation to disburse grant funds remains subject to NSP's receipt of all jurisdictional regulatory approvals.

### 3. PAYMENTS TO CONTRACTOR

Subject to the conditions in this Grant Contract and Exhibits hereto, NSP agrees to reimburse Contractor for actual and allowable expenses incurred in accordance with Exhibit C subject to the limitations herein and therein, and the milestone progress or final payment limitations in Exhibit C. The total amount of this Grant Contract shall not exceed the maximum grant amount stated in Exhibit C or Contractor's total actual and allowable costs, whichever is less.

A. A request for payment shall consist of:

- 1) An invoice that lists actual and allowable expenses incurred up to the milestone payment amounts indicated in Exhibit C; and
- 2) Substantiation of such expenses in a form reasonably acceptable to NSP; and
- 3) Documentation of the deliverables as detailed in Exhibit C satisfactory to NSP.
- 4) Each request for payment shall constitute a representation and warranty by Contractor that: (a) all representations and warranties set forth in this Grant Contract remain true and correct in all material respects, (b) Contractor has complied with all obligations contained in this Agreement through the date of the request for payment and (c) Contractor has fully disclosed to NSP all facts and other information known to Contractor which reasonably may affect Contractor's ability to complete the Project on schedule.

B. Contractor shall submit all invoices to the NSP Contract Manager.

C. Payments shall be made to Contractor only for undisputed invoices. An undisputed invoice is an invoice for amounts that appear to the NSP Contract Manager to be consistent with and allowed under this Grant Contract. In the event the invoice contains expenses that the NSP Contract Manager believes have not been incurred, are inconsistent, or inappropriate, the NSP Contractor shall attempt to provide notice of identified issues to the Project Manager within fifteen (15) working days after receipt the invoice. Invoices paid remain subject to audit and verification.

D. Payment shall be made to Contractor no later than 30 calendar days from the date a correct, undisputed invoice is received by the NSP Contract Manager.

E. Contractor shall retain all records relating to all expenses reimbursed to Contractor, and to hours of employment on this Grant Contract by all employees of Contractor for which NSP is billed. Such records shall be maintained for a period of three (3) years after final payment of this Grant Contract, or until audited by the State, whichever occurs first, and shall be available for inspection or audit at any reasonable time by NSP or its designee.

### 4. PROJECT SCHEDULE AND BUDGET REVISIONS

- A. Contractor shall meet the critical path schedule set forth on Exhibit B and meet the Project budget set forth on Exhibit C. Contractor shall provide reasonable advance notification to NSP of any anticipated schedule deviations or budget reallocations. Contractor may reallocate an element, or task in the budget of up to fifteen (15) percent of the total budget without prior written notice to NSP. Reallocations of more than fifteen (15) percent of the total budget require prior written approval of NSP.
- B. Contractor shall provide sixty (60) days advance written notification to NSP for any request to make a reallocation as contemplated by Section 4.A of more than fifteen (15) percent. Along with any such request, Contractor shall submit any supporting documentation as NSP may request.
- C. Contractor must report (i) changes in the scope, timing, use of equipment, use of suppliers, vendors, budgets, Project Managers and Project key assistants, location, Milestones or changes or potential changes that could affect the Milestones of the Project, and similar changes, events or conditions that could affect the Project and (ii) the occurrence of any event which could, with the giving of notice or the passage of time or both, constitute an Event of Default by Contractor under this Agreement, as soon as possible, but in no event later than five (5) business days after their occurrence or the knowledge of their potential occurrence. Such information shall be provided on the Notice of Change or Potential Change Form in Exhibit I to this Grant Contract. The NSP Contract Manager shall review such Change forms. Administrative changes may be allowed by the NSP Contract Manager by written approval. Minor changes may be agreed to by the Project Manager and the NSP Contract Manager and shall be memorialized in a written amendment to this Grant Contract. Material changes must be approved by NSP in the form of a written amendment to this Grant Contract, which the Parties acknowledge may be subject to approval of the Minnesota Public Utilities Commission (“Commission”) as deemed appropriate by NSP, in NSP’s sole discretion. A change is material if it results in changes in deliverables, moves due dates beyond the term of the Contract or modifies the scope of work reasonably beyond that approved by the Commission (any of such changes being a “Change”), and may require regulatory approval. If NSP determines appropriate, it may approve, modify, reject or refer the Change to the Advisory Group and/or the Commission for consideration. NSP anticipates providing to the Commission any Changes that are deemed to represent significant Project scope changes. All information relating to any Change may be provided to the Commission or otherwise publicly disclosed.

## 5. CONTRACT MANAGEMENT

### A. Project Manager

The Project Manager on behalf of Contractor is designated in Exhibit D. Such Project Manager may not be replaced without NSP’s prior written approval, such approval not to be unreasonably withheld. The Project Manager is responsible for the day-to-day Project status, decisions and communications with the NSP Contract Manager.

B. NSP Contract Manager

The NSP Contract Manager is designated in Exhibit D. The NSP Contract Manager is responsible for the day-to-day contract status, decisions and communications with the Project Manager. The NSP Contract Manager will review all deliverables, reports and invoices as provided for in Section 8, and notify Project Manager of any reporting deficiencies.

6. ANNUAL EVALUATION

NSP may annually evaluate all reporting, as required in Section 8, as well as any other information collected in accordance with this Grant Contract, to determine whether the Contractor is in compliance with the Standards of Performance as stated in Section 7. Contractor shall fully cooperate with NSP in any such evaluations. Any such annual evaluation may be presented to the Advisory Group and/or the Commission.

7. STANDARD OF PERFORMANCE

- A. Standard of Performance shall mean Contractor, its subcontractors and their employees and agents in the performance of Contractor's work shall exercise the degree of skill and care required by customarily accepted good professional practices and procedures used in designing and building energy production facilities and (i) shall comply with all applicable federal, state and local laws, regulations and Project permit conditions, (ii) shall not infringe upon any intellectual property rights of any third parties and (iii) shall meet or exceed all performance standards and matrices set forth in the Proposal.
- B. In the event that Contractor or its subcontractor(s) fail to perform in accordance with the Standard of Performance as defined in Section 7.A above, and in the event that the NSP Contract Manager becomes aware of any such failure, the NSP Contract Manager may notify the Project Manager who shall identify and propose an appropriate remedy for the failure. No failure of the NSP Project Manager to notify the Project Manager of any such failure shall relieve Contractor from any of its duties or obligations under this Grant Contract. In the event NSP determines the proposed remedy is not satisfactory, the NSP Contract Manager and the Project Manager shall seek to negotiate an appropriate resolution given the circumstances. If NSP determines such a resolution cannot be reached, it may refer the matter to the Advisory Group, who may choose to recommend an appropriate resolution. NSP shall retain all its rights under this contract should no mutual resolution be reached.
- C. Nothing contained in this section is intended to limit any of the rights or remedies, which NSP may have under law or under other sections of this Grant Contract.

8. REPORTING

- A. Once a month, beginning after the Contract Start Date, Project Manager shall prepare and provide to the NSP Contract Manager a progress report in form and detail acceptable to NSP that documents evidence of progress and deliverables as detailed in Exhibit C. Summary reports are to include a general overview of how the

Project is progressing; summary of the work activity for the past period; identification of active milestone(s) and estimate percent of Project work completed; specific/unforeseen problems encountered that need to be overcome that may be expected to affect the milestones, timeline of deliverables, or costs and Contractor's efforts to comply with the Project critical path schedule; and significant Project accomplishments. All such reports will be posted by Xcel Energy on a public website approved by the Commission.

- B. At the conclusion of the Contractor's work, Contractor shall prepare a comprehensive written Final Report in form and detail acceptable to NSP, including an executive summary. The Final Report is to include a summary of what the project was intended to do and what was discovered or accomplished, the usefulness and benefits of the project's discovery or accomplishments, and a summary of lessons learned or project outcomes. Such Final Report must contain sufficient detail for technical readers and a clearly written summary for non-technical readers. The non-technical summary should be one-and-a-half to two pages in length including an executive summary of the project, the methodology used for the project, ratepayer benefits from the project and any lessons learned. The Final Report must include an evaluation of the Project's financial, environmental, and other benefits to the State of Minnesota and to NSP's ratepayers.

The NSP Contract Manager will review and approve the Final Report, or in the event the Final Report is not satisfactory to NSP, shall identify deficiencies, which Contractor shall resolve within 30 days. Contractor shall also meet with the Advisory Group to present the findings, conclusions, and recommendations. The Contractor shall present the Final Report to the Advisory Group on or before the Contract End Date. All Final Reports will be posted by Xcel Energy on a public website approved by the Commission.

- C. All reports, including reprints, shall include the following legend:

#### **LEGAL NOTICE**

**THIS REPORT WAS PREPARED AS A RESULT OF WORK SPONSORED BY THE RENEWABLE DEVELOPMENT FUND AS MANAGED BY XCEL ENERGY. IT DOES NOT NECESSARILY REPRESENT THE VIEWS OF XCEL ENERGY, ITS EMPLOYEES, OR THE RENEWABLE DEVELOPMENT FUND ADVISORY GROUP. XCEL ENERGY, ITS EMPLOYEES, CONTRACTORS, AND SUBCONTRACTORS MAKE NO WARRANTY, EXPRESS OR IMPLIED, AND ASSUME NO LEGAL LIABILITY FOR THE INFORMATION IN THIS REPORT; NOR DOES XCEL ENERGY, ITS EMPLOYEES OR THE RENEWABLE DEVELOPMENT FUND ADVISORY GROUP REPRESENT THAT THE USE OF THIS INFORMATION WILL NOT INFRINGE UPON PRIVATELY OWNED RIGHTS. THIS REPORT HAS NOT BEEN APPROVED OR DISAPPROVED BY NSP NOR HAS NSP PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION IN THIS REPORT.**

- D. Contractor shall provide annual, public electric generation reports to document RDF benefits for the ten (10) years subsequent to Project completion. Reports are to include power generated, net sales, and economic indicators and shall be provided to the RDF Advisory Group. NSP may require adequate assurance or withhold final payment of funds until this reporting covenant has been completed.

## 9. RECORDKEEPING, COST ACCOUNTING AND AUDITING

### A. Cost Accounting

Contractor agrees to keep separate, complete, and correct accounting of the costs involved in developing, installing, constructing, and testing of the Facility, the work on the Project or rights under this Grant Contract.

### B. Accounting Procedures

The Contractor's costs shall be determined on the basis of the Contractor's accounting system procedures and practices employed as of the effective date of this Grant Contract. The Contractor's cost accounting practices used in accumulating and reporting costs during the performance of this Grant Contract shall be consistent with the practices used in estimating costs for any proposal to which this Grant Contract relates; provided that such practices are consistent with the other terms of this Grant Contract and provided, further, that such costs may be accumulated and reported in greater detail during performance of this Grant Contract. The Contractor's accounting system shall distinguish between direct costs and indirect costs. All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this Grant Contract.

### C. Allowability of Costs

#### 1) Allowable Costs

The costs for which the Contractor shall be reimbursed under this Grant Contract include all direct costs incurred in the performance of the work that is identified in Exhibit C, subject to the limitations and cap of the Grant Amount in this Grant Contract and Exhibit C. Costs must be incurred within the term of the Contract.

#### 2) Unallowable Costs

Contingency costs, imputed costs, fines and penalties, losses on contracts, liabilities from failure to comply with applicable laws, rules and regulations, costs, settlements and judgments under any litigation or arbitration, expenses not incurred, and excess profit taxes are unallowable, as well as costs determined inappropriate or inconsistent with Exhibit C, by the NSP Contract Manager.

### D. Audit Rights



Contractor shall maintain books, records, documents, and other evidence, based on the procedures set forth above, sufficient to reflect properly all costs claimed to have been incurred in performing this Grant Contract. NSP, or at NSP's option, a public accounting firm designated by NSP, may audit such accounting records at all reasonable times with prior notice by NSP. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of NSP to audit records and interview staff in any subcontract related to performance of this Grant Contract.

## 10. CONFIDENTIALITY

- A. NSP agrees to work with Contractor to make reasonable efforts to keep confidential the items listed in Exhibit E. Designation of trade secrets and justification for trade secret information before the Commission and other agencies shall be the responsibility of the Contractor.

- B. Public and Confidential Deliverables

Deliverables including, but not limited to, progress reports, task deliverables and the Final Report shall not contain confidential information except when the NSP Contract Manager and the Contractor deem it necessary to include confidential information in a deliverable. In such event, the Contractor shall prepare the deliverable in two separate volumes, one for public distribution and one to be maintained in NSP's confidential records. Only those items specifically listed in Exhibit E or in a subsequent determination of confidentiality qualify as confidential deliverables.

- C. Identifying and Submitting Confidential Information

All confidential information submitted by the Contractor shall be marked "Confidential" on each document containing the confidential information.

- D. Future Confidential Information

During the term of this Grant Contract, Contractor may develop additional Data or information that the Contractor considers to be nonpublic confidential information not listed on Exhibit E. Contractor must list all items and information along with justification for confidentiality and submit a proposed revision of Exhibit E to the NSP Contract Manager. Exhibit E may be amended by mutual agreement, however any amendment to Exhibit E shall not affect NSP's rights under section 12 as to the additional Data and information by amending Exhibit E. In the event there is a disagreement over the items to be delivered under the Contract, the Parties shall use the "Disputes" clause found at section 14.A. Such subsequent determinations will be added to Exhibit E.

- E. General Right to Use Information

Except for Confidential Information identified on, or added by amendment to, Exhibit E, NSP shall have the right to use all information and data delivered by Contractor or derived from the Project or this Grant Contract: (i) in the course of providing goods or services to customers of NSP whether or not affected by the Project, and (ii) for purposes of research, development, marketing and producing energy and energy systems and processes. Contractor hereby also consents to release of its customer information with regard to the foregoing.

#### 11. REPRESENTATIONS OF CONTRACTOR

Contractor represents, warrants and covenants that, except as set forth on Schedule 11 hereto:

- A. It is duly authorized to conduct business in all jurisdictions necessary to perform this Grant Contract, and it has the power and authority to enter into and perform this Grant Contract; and
- B. The execution and performance of this Grant Contract and the construction and operation of the Facility and implementation of the Project hereunder will not conflict with or constitute a breach of or a default under any contract, license or other agreement applicable to Contractor or its property; and
- C. The execution and performance of this Grant Contract and the construction and operation of the Facility and the implementation of the Project hereunder will not require any consent, license, permit or approval that has not been obtained from the appropriate governmental authority; and
- D. It has taken all actions necessary and advisable to authorize this Grant Contract and the construction and operation of the Project hereunder, and this Grant Contract is the legal, valid and binding obligation of Contractor, fully enforceable in accordance with its terms; and
- E. It has all internal financing and co-funding resources available for the Project as required to complete the Project to be funded under this Grant Contract; and
- F. It has entered into all contracts, in a form satisfactory to NSP, necessary for the services, supplies, materials, equipment and other products necessary for performance of the Project with qualified suppliers and will promptly pay and discharge all such obligations upon receipt of conforming goods and services provided for the Project; and all such orders and contracts may be assigned to NSP if NSP exercises its right, in its sole discretion, under this Grant Contract to complete the performance of the Grant Contract, and contractor hereby authorizes any monies paid by NSP on such order or contracts to be offset and deducted from the Grant Amount of this Grant Contract; and
- G. It has all the necessary permits, orders, authorization or any other necessary permission in place for the performance of this Grant Contract, including, but not limited to, emissions permits, transportation permits, conditional use permits and waste permits; and

- H. It will provide true and correct copies of all contracts and agreements related to the performance of this Grant Contract to NSP upon execution; and
- I. It will not terminate any contract with any Minnesota-based institution, supplier or service provider involved in the performance of this Project without consultation with NSP; and
- J. It and/or its contractors will maintain the liability insurance coverage required by Exhibit F hereof and any other insurance required for the Project and name Xcel Energy, NSP and the Advisory Group as additional insureds. Contractor agrees to promptly notify NSP of any notice of cancellation received from Contractor's current insurer and who the replacements insurer will be without allowing any gap in such insurance.

## 12. RIGHTS OF PARTIES REGARDING INTELLECTUAL PROPERTY

### A. NSP's Rights in Deliverables

Subject to Section 12.B of this Grant contract, Deliverables, reports and Deliverable Data specified for delivery to NSP under this Grant Contract shall become the property of NSP. NSP may use, publish, and reproduce the deliverables and reports subject to the provisions of subparagraph C in accordance with the goals and policies of NSP and jurisdictional regulatory authorities for public information and renewable energy development educational purposes.

### B. Rights in Technical Data, Generated Data, and Deliverable Data

#### 1) Contractor's Rights

All Data, including Technical Data, Generated Data and Deliverable Data, produced under this Grant Contract shall be the property of the Contractor, limited by the license retained by the NSP in paragraph 12.B.2 below, and the rights NSP has in deliverables specified above in section 12.A.

#### 2) NSP's Rights

For Technical Data, Generated Data and Deliverable Data produced under this Grant Contract, NSP retains a no-cost, non-exclusive, non-transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, produce and to authorize others to produce, translate, publish and use all such Data, subject to the provisions of subparagraph C.

### C. Limitations on NSP Disclosure of Contractor's Confidential Records

- 1) Data provided to NSP by Contractor, which Data the Parties have agreed to keep confidential and which Contractor seeks to have designated as confidential, or is the subject of a pending application for confidential designation, shall not be disclosed by NSP, unless disclosure is required such

as by order of a court of competent jurisdiction or determination by regulatory agency.

- 2) NSP agrees not to disclose Confidential Data or the contents of reports containing information considered by Contractor as confidential, without first providing a copy of the disclosure document for review and comment by Contractor. Contractor may make an application for confidential designation on some or all of the Data, and shall be responsible for all costs and expenses thereof.

D. Exclusive Remedy

In the event NSP intends to publish or has disclosed Data the Contractor considers confidential, the Contractor's sole and exclusive remedy shall be a civil court action for injunctive relief, which shall be filed in Hennepin County, Minnesota. This provision shall not prevent Contractor from attempting to prevent disclosure by any government agencies under the Minnesota Government Data Practices Act provisions of Minnesota Statutes, Chapter 13 or otherwise.

E. Limitations on Contractor Disclosure of Contract Data, Information, Reports and Records

- 1) Contractor will not disclose the contents of the final or any preliminary deliverable or report without first providing a copy of the disclosure document for review and comment to the NSP Contract Manager. The Contractor shall incorporate the comments of the NSP Contract Manager, unless, based upon professional judgment, Contractor and NSP agree otherwise.
- 2) Notwithstanding the foregoing, in the event any public statement is made by NSP as to the role of Contractor or the content of any preliminary or Final Report of Contractor hereunder, Contractor may, if it believes such statement to be incorrect, state publicly what it believes is correct.
- 3) No record that is provided by NSP to Contractor for Contractor's use in executing this Grant Contract and which has been designated as confidential shall be disclosed, unless a court of competent jurisdiction orders disclosure, and Contractor has timely provided NSP with a copy thereof. At the election of the NSP Contract Manager, the Contractor, its employees and any subcontractor shall execute a "Confidentiality Agreement," supplied by the NSP Contract Manager.
- 4) Contractor acknowledges that each of its officers, employees, and subcontractors who are involved in the performance of this Grant Contract will be informed about the restrictions contained herein and will be required to abide by the above terms; and that Contractor will be responsible for any violations by any such individuals.

F. Copyrights

- 1) Any copyrightable material first produced under this Grant Contract shall be owned by the Contractor, limited by the license granted to NSP in 2) below.
- 2) Contractor agrees to grant NSP a royalty-free, no-cost nonexclusive, irrevocable, nontransferable worldwide, perpetual license to produce, translate, publish and use and to authorize others to produce, translate, publish and use all copyrightable material first produced or composed in the performance of this Grant Contract.
- 3) Contractor will apply copyright notices to all deliverables using the following form or such other form as may be reasonably specified by NSP.

“©[Year of first publication of deliverable], [the Copyright Holder’s name].  
ALL RIGHTS Reserved.”

#### G. Intellectual Property Indemnity

Contractor warrants that Contractor will not, in the course of its work under this Grant Contract or otherwise, infringe or misappropriate any intellectual property right of a third party, and further warrants and agrees that it will conduct a reasonable investigation of the intellectual property rights of third parties to avoid such infringement. Contractor will defend and indemnify NSP from and against any claim, lawsuit or other proceeding, loss, cost, liability or expense (including court costs and reasonable fees of attorneys and other professionals) to the extent arising out of: (i) any third party claim that a deliverable infringes any patent, copyright, trade secret or other intellectual property right of any third party, or (ii) any third party claim arising out of the negligent or other tortious act(s) or omission(s) by the Contractor, its employees, subcontractors or agents, in connection with or related to the deliverables or the Contractor’s performance thereof under this Grant Contract.

#### H. Green Tags or Environmental Renewable Energy Credits

Excluding any federal or state tax credits to which Contractor is entitled, such as that granted under Minnesota Statutes, section 216C.41 for the Facility, Contractor hereby grants, assigns, and transfers to NSP any and all rights to and ownership of attributes of an environmental or other nature that are created or otherwise arise from the Facility’s generation of energy using renewable fuel (in contrast to the generation of electricity using nuclear or fossil fuels or resources), including, but not limited to all Renewable Energy Credits. For the purposes of this Grant Contract, “Renewable Energy Credits” shall mean all attributes of an environmental or other nature that are created or otherwise arise from the Facility’s generation of electrical energy using any renewable fuel in contrast to the generation of electricity using nuclear or fossil fuels or resources, including without limitation, tags, certificates or similar products or rights associated with renewable fuels as a “green” or “renewable” electric generation resource, including any and all environmental air quality credits, emissions reductions, off-sets, allowances or other benefits related to the generation of energy by the Facility that reduces, displaces or offsets emissions from fuel combustion at another location pursuant to any existing or future

international, federal, state or local legislation or regulation or voluntary agreement, and the aggregate amount of credits, offsets or other benefits including any rights, attributes or credits arising from or eligible for consideration in the Midwest Renewable Energy Tracking System ("M-RETS") or any similar program pursuant to any international, federal, state or local legislation or regulation or voluntary agreement and any renewable energy certificates issued pursuant to any program, information system or tracking system associated with the renewable electrical energy generated from the Facility.

The provisions of this Section 12.H of this Grant Contract shall: (i) be applicable to all energy produced by the Facility for the life of the Facility, (ii) survive the termination or expiration of this Grant Contract, as provided therein, and (iii) survive the termination or expiration of any agreement between Contractor and NSP or its affiliates for the purchase of the capacity and/or energy produced by the Facility, if any. To the extent Contractor transfers ownership of or other rights in the Facility to a third party, Contractor shall (i) promptly notify NSP of such transfer and (ii) ensure that the provisions of this Section 12.H of this Grant Contract shall be applicable to and enforceable against such third party or any subsequent owner of the Facility. Transfer of ownership of or other rights in the Facility by Contractor shall not relieve Contractor of its obligations under this Section 12.H of this Grant Contract.

The Parties acknowledge and agree that attributes of an environmental or other nature that are created or otherwise arise from the Facility's generation of energy using renewable fuel are unique to the Facility and cannot be replaced by the purchase of replacement Renewable Energy Credits; and NSP shall have the rights to specific performance provided in Section 15.7 hereof.

### 13. NOTICES TO PARTIES

Notice to either party may be given by certified mail properly addressed, postage fully prepaid, or by overnight carrier providing record of receipt, to the address designated in Exhibit D for each respective party or to such other address as either party shall notify the other in accordance with this section.

### 14. DISPUTES

#### A. Dispute Resolution

If NSP and the Contractor cannot resolve a dispute or grievance, Project Manager and NSP Contract Manager shall each prepare a written statement of the issues in dispute, the legal authority or other basis for their respective positions and the remedy sought. The packages must be submitted to the Renewable Development Fund Advisory Group. The Advisory Group shall make a determination within ten working days after receipt of the package. Should Contractor disagree with the Advisory Group's decision, Contractor may appeal to the Commission. Contractor shall continue to perform its responsibilities under this Grant Contract during any dispute.

B. Legal Remedy

The interpretation and performance of this Grant Contract and each of its provisions shall be governed and construed in accordance with the laws of the State of Minnesota. The Parties hereby submit to the exclusive jurisdiction and enforcement authority of the Commission or, in the event the Commission declines jurisdiction, or in the event that NSP is exercising its rights under Sections 12.D or 15.5 hereof, to the exclusive jurisdiction of the courts of the State of Minnesota, and venue is hereby stipulated as Minneapolis, Minnesota.

15. DEFAULT AND TERMINATION

15.1 Events of Default of Contractor.

(A) Any of the following shall automatically constitute an Event of Default of Contractor upon its occurrence and no notice or cure period shall be applicable:

- 1) Contractor's dissolution or liquidation;
- 2) Contractor's assignment of this Grant Contract or any of its rights hereunder;
- 3) Contractor's sale or other transfer of the Project or any part thereof or interest therein during the Term of this Grant Contract;
- 4) Contractor's filing of a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or Contractor voluntarily taking advantage of any such law or act by answer or otherwise;
- 5) Contractor's actual or apparent fraud with any funding under this Grant Contract, waste, tampering with any NSP-owned facilities or material, intentional misrepresentation or willful misconduct in connection with this Grant Contract and/or the work on the Project; or
- 6) Contractor's abandonment of the Project;

(B) Any of the following shall constitute an Event of Default of Contractor upon its occurrence but shall be subject to cure within ninety (90) days after the date of written notice from NSP to Contractor:

- 1) Contractor's failure to meet the Critical Path Schedule;
- 2) Contractor's failure to maintain in effect any agreements required to deliver the final product; or

- 3) Contractor's failure to comply with the Standard of Performance under Section 7 or with any other material obligation under this Grant Contract.
- 4) Contractor's failure to make any payment required under this Grant Contract;
- 5) Any direct or indirect change of control of Contractor by sale of majority equity interest, transfer of majority voting rights, merger, consolidation, additional issuance of equity or otherwise);
- 6) Any representation or warranty made by Contractor in this Grant Contract shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on the Project or NSP; or
- 7) The filing of a case in bankruptcy or any proceeding under any other insolvency law against the parent or any other affiliate of Contractor that could materially impact Contractor's ability to perform its obligations hereunder; provided, however, that Contractor does not obtain a stay or dismissal of the filing within the cure period.

#### 15.2 Events of Default of NSP.

- (A) Any of the following shall automatically constitute an Event of Default of NSP upon its occurrence and no notice or cure period shall be applicable:
  - 1) NSP's dissolution or liquidation provided that division of NSP into multiple entities or any other corporate reorganization or business restructuring shall not constitute dissolution or liquidation; or
  - 2) NSP's filing of a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any State, or NSP voluntarily taking advantage of any such law or act by answer or otherwise.
- (B) NSP's failure to comply with any other material obligation under this Grant Contract, which would result in a material adverse impact on Contractor, shall constitute an Event of Default of NSP upon its occurrence but shall be subject to cure within ninety (90) days after the date of written notice from Contractor to NSP; or
- (C) NSP's failure to make any undisputed payment shall constitute an Event of Default of NSP upon its occurrence but shall be subject to cure within sixty (60) Days after the date of written notice from Contractor to NSP.



- 15.3 Termination. Upon the occurrence of an Event of Default, which has not been cured within the applicable cure period, if any, the non-defaulting Party shall have the right to immediately terminate this Grant Contract without further notice. Neither Party shall have the right to terminate this Grant Contract except as provided for upon the occurrence of an Event of Default as described above or as otherwise may be explicitly provided for in this Grant Contract. In addition, the Parties may mutually agree in writing to terminate this Grant Contract.
- 15.4 Termination by NSP Due to Event of Default of Contractor. In the event NSP terminates this Grant Contract due to an Event of Default by Contractor, Contractor shall pay to NSP all monies disbursed under this Grant Contract by NSP to Contractor as of the termination of this Grant Contract due to an Event of Default by Contractor. Such payment shall be made by cashier's check or wire transfer no later than ninety (90) days following such termination of this Grant Contract.
- 15.5 Effect of Termination. The Parties acknowledge and agree that NSP and Contractor have entered into this Grant Contract to implement the order of the Commission approving the RDF grant to Contractor for its work on the Project. The Parties further acknowledge and agree that this Grant Contract, by implementing such order, provides the terms and conditions for Contractor's conduct and obligations so that it may receive such grant and the terms and conditions for NSP's administration of the grant. To that end, in the event that this Grant Contract is terminated pursuant to its terms, Contractor agrees that such termination shall also terminate any and all of Contractor's rights to the RDF grant award that may exist separate and apart of this Grant Contract by virtue of the Commission order approving the Project and Contractor hereby explicitly waives and any all of its rights to seek to implement any and all of such rights that may exist through such Commission order and outside of this Grant Contract. Furthermore, termination of this Grant Contract pursuant to its terms shall act as a withdrawal of Contractor's grant request.
- 15.6 Construction by NSP Following Event of Default of Contractor.
- (A) Prior to any termination of this Grant Contract due to an Event of Default of Contractor, NSP or its designated representative shall have the right, but not the obligation, to possess, assume control of, and operate the Project facility as agent for Contractor (in accordance with Contractor's rights, obligations, and interest under this Agreement) during the period provided for herein. Contractor shall not grant any person, other than the facility lender, a right to possess, assume control of, and operate the facility that is equal to or superior to NSP's right under this Section.
  - (B) NSP shall give Contractor thirty (30) days notice in advance of the contemplated exercise of NSP's rights under this Section. Upon such notice, Contractor shall collect and have available at a convenient, central location at the Project facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the facility in accordance with industry engineering practices and procedures. Upon such notice, NSP, its employees, contractors, or designated third parties shall have the

unrestricted right to enter the Project site and the facility for the purpose of constructing and/or operating the facility. Contractor hereby irrevocably appoints NSP as Contractor's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as NSP may reasonably deem necessary or appropriate to exercise NSP's step-in rights under this Section.

- (C) NSP shall be entitled to immediately draw upon any remaining RDF Grant Funds awarded for the Project to cover any expenses incurred by NSP in exercising its rights under this Section.
- (D) During any period that NSP is in possession of and constructing and/or operating the Project facility pursuant to the foregoing paragraphs, NSP shall use commercially reasonable efforts to perform and comply with all of the obligations of Contractor under this Grant Contract and shall use the proceeds from the sale of electricity generated by the facility to first, reimburse NSP for any and all expenses reasonably incurred by NSP (including a return on capital at NSP's authorized return on equity most recently determined by the Minnesota Public Utilities Commission) in taking possession of and completing the Project facility, and to second, remit any remaining proceeds to Contractor.
- (E) During any period that NSP is in possession of and operating the Project facility, Contractor shall retain legal title to and ownership of the Project facility and NSP shall assume possession and control solely as agent for Contractor:
  - 1) In the event that NSP is in possession and control of the Project facility for an interim period, Contractor may resume operation and NSP shall relinquish its right to operate when Contractor demonstrates to NSP's reasonable satisfaction that it will remove those grounds that originally gave rise to NSP's right to operate the facility, as provided above, in that Contractor (i) will resume construction of the facility in accordance with the provisions of this Grant Contract, and (ii) has cured any Events of Default of Contractor which allowed NSP to exercise its rights under this Section.
  - 2) In the event that NSP is in possession and control of the Project facility for an interim period, the facility lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the facility and NSP shall relinquish its right to operate when the facility lender or any nominee or transferee thereof, requests such relinquishment and allows for a reasonable period of time to transition possession and operations.
- (F) NSP's exercise of its rights hereunder to possess and construct the Project facility shall not be deemed an assumption by NSP of any liability attributable

to Contractor. If at any time after exercising its rights to take possession of and operate the facility, NSP elects to return such possession and operation to Contractor, NSP shall provide Contractor with at least fifteen (15) days advance notice of the date NSP intends to return such possession and operation, and upon receipt of such notice, Contractor shall take all measures necessary to resume possession, construction and operation of the Project facility on such date.

- (G) In the event NSP assumes construction of the facility under this Section, NSP shall construct the facility in conformance with standard utility practices.

- 15.7 Specific Performance. In addition to the other remedies specified in this Grant Contract, in the event that any Event of Default of Contractor is not cured within the applicable cure period set forth herein, NSP may elect to treat this Grant Contract as being in full force and effect and NSP shall have the right to specific performance. If the breach by Contractor arises from a failure by third party constructing the facility pursuant to a construction agreement entered into with Contractor, and Contractor fails or refuses to enforce its rights under the construction agreement which would result in the cure, or partial cure, of the Event of Default, NSP's right to specific performance shall include the right to obtain an order compelling Contractor to enforce its rights under the construction agreement. Likewise, for any breach of this Grant Contract by NSP, Contractor shall have the right to specific performance

## 16. GENERAL TERMS & CONDITIONS

- A. The following contract provisions, rights and obligations shall survive the completion or termination date of this Grant Contract:
- |                                                       |            |
|-------------------------------------------------------|------------|
| • "Standard of Performance"                           | Section 7  |
| • "Recordkeeping, Cost Accounting and Auditing"       | Section 9  |
| • "Confidentiality"                                   | Section 10 |
| • "Rights of Parties Regarding Intellectual Property" | Section 12 |
| • "Disputes"                                          | Section 14 |
| • "Default and Termination"                           | Section 15 |
| • "General Terms and Conditions"                      | Section 16 |
- B. Headings have been inserted for the purpose of convenience and ready reference. They do not purport, and shall not be deemed, to define, limit, or extend the scope or intent of this Grant Contract.
- C. Contractor shall make representatives available to testify in the event the Commission or State Legislature hold hearings or conduct an investigation with regard to this Grant Contract.

- D. Contractor shall provide the NSP Contract Manager reasonable access to Contractor's premises and all Project records.
- E. No amendment, alteration or variation of the terms of this Grant Contract shall be valid unless made in writing and signed by the Parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the Parties hereto. Other than as specified herein, no document or communication passing between the Parties hereto shall be deemed as part of this Grant Contract.
- F. Contractor shall not assign this Grant Contract, either in whole or in part, without the prior written consent of NSP, such consent may be withheld by NSP for any reason. Consent includes a formal written contract amendment approved by the Commission.
- G. Minnesota law shall govern interpretation of this Grant Contract.
- H. Time is of the essence in this Grant Contract.
- I. Contractor shall indemnify, defend and save harmless NSP, its affiliates, officers, agents and employees and members of the Renewable Development Fund Advisory Group from any and all claims and losses arising out of: (i) Contractor's performance under this Grant Contract regardless of whether such performance is an Event of Default or not and (ii) Contractor's negligence of willful misconduct.
- J. Contractor, its agents and employees shall act in an independent capacity and not as officers or employees or agents of NSP or the Advisory Group.
- K. No waiver of any breach of this Grant Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Grant Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law, except to the extent limited or excluded by the express terms of this Grant Contract. The failure of NSP to enforce at any time any of the provisions of this Grant Contract, or to require at any time performance by Contractor of any of the provisions therefore, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this Grant Contract or any part thereof or the right of NSP to thereafter enforce each and every such provision.
- L. If any provision of this Grant Contract is held invalid, that invalidity shall not affect other provisions of the Contract. In the event that any provision of this Grant Contract is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Grant Contract have force and effect and shall not be effected thereby.
- M. All Exhibits and Addendums are incorporated into this Grant Contract by this reference and made a part hereof. Contractor represents and warrants that all material statements of fact made in its Grant Application and due diligence responses are true and correct statements as of the Contract Start Date and that such statements do not omit any material facts necessary to make Contractor's Grant

Application materially misleading. This Grant Contract contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior negotiations between the Parties. In the event of any inconsistency between any of the terms and conditions of this Grant Contract and the terms and conditions of any or all Exhibits, the terms and conditions of this Grant Contract shall control. In the event of any inconsistency between the terms and conditions of any or all of Exhibits A, B and C and the terms and conditions of the Proposal, the terms and conditions of Exhibits A, B and C shall control

- N. Contractor acknowledges and agrees that nothing under this Grant Contract or the Commission order approving the RDF grant to Contractor for the purposes of the Project obligates NSP or its affiliates to enter into any agreement for the purchase by NSP or its affiliates of the energy and/or capacity generated by the Facility or Project.
- O. Contractor acknowledges that NSP manages the RDF and power purchases through different functions of the company or through its affiliates. To that end, Contractor agrees that any breach, dispute, or other issue related to NSP's or its affiliates' performance under any agreement for the purchase of the energy and/or capacity of the Facility or Project ("PPA") or other conduct by NSP related to such PPA shall not be considered a breach by NSP of its obligation of good faith and fair dealing or any other statutory or common law requirement under this Grant Contract and Contractor agrees to waive any and all claims at equity or law related thereto. Contractor additionally agrees that any breach, dispute, or other issue related to NSP's performance of this Grant Contract or other conduct by NSP related to this Grant Contract shall not be considered a breach by NSP of its obligation of good faith and fair dealing or any other statutory or common law requirement under the PPA and Contractor agrees to waive any and all claims at equity or law related thereto.
- P. IN NO EVENT WILL NSP BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR KIND BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, INCLUDING, BUT ARE NOT LIMITED TO, LOSS OF PROFIT; LOSS OF SAVINGS OR REVENUE; LOSS OF GOODWILL; LOSS OF USE OF THE PROJECT OR ANY ASSOCIATED PROJECT EQUIPMENT; COST OF CAPITAL; COST OF ANY SUBSTITUTE PROJECT EQUIPMENT, FACILITIES, OR SERVICES; DOWNTIME; THE CLAIMS OF ANY THIRD PARTIES INCLUDING CUSTOMERS; AND INJURY TO PROPERTY REGARDLESS OF THE NUMBER OF CLAIMS OR THE THEORIES OF RELIEF.

In Witness Whereof, the Parties have agreed to this Grant Contract.

Northern States Power Company,  
a Minnesota corporation

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

Date: \_\_\_\_\_

Its: \_\_\_\_\_

(Name of Contractor)

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

Date: \_\_\_\_\_

Its: \_\_\_\_\_

## **EXHIBIT AND SCHEDULE LIST**

**Exhibit A      Work Statement**

The work statement in this Exhibit provides the objective of the grant application, the value of performing the Project, anticipated results and the tasks required to complete the Project.

**Exhibit B:      Critical Path Schedule**

Exhibit B includes the critical path schedule for the Project.

**Exhibit C:      Budget, Project Payment Milestones and Deliverables**

This Exhibit includes the approved budget for the Project, the Project payment Milestones and deliverables. The Project payment schedule and limits are intended to reflect anticipated value added by Contractor as a result of the progress on the Project, rather than expenses incurred to the date of a grant partial payment request.

**Exhibit D:      Project Manager and Contract Manager - Contractor and NSP**

This Exhibit includes the names of the Project Manager and Contract Manager along with the necessary information required for continued communication.

**Exhibit E:      Confidential List**

This Exhibit includes the description of any non-public confidential information involved in performance of the Project or to be derived from the Project required to be listed under Article 11.

**Exhibit F:      Insurance Certificates**

This Exhibit includes the coverages, limits and requirements for Certificates of Insurance to be obtained and maintained by the Contractor.

**Exhibit G:      Special Conditions**

This Exhibit includes the special conditions to be included as a part of this Grant Contract.

**Exhibit H:      Contractor's Balance Sheet**

This Exhibit includes the Contractor's balance sheet.

**Exhibit I:      Notice of Change or Potential Change in RDF Grant Contract Project.**

This Exhibit includes the form to be used by the Contractor for a notice of change or potential change to this Grant Contract or the Project.

**Exhibit J:      Contractor's approved Proposal.**

Schedule 11: Exceptions to Contractor's Representations.