

ORDINANCE NO. 743
ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUSTIN
AUTHORIZING THE EXECUTION OF A GROUND LEASE BETWEEN
SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY AND
AUSTIN UTILITIES, AUSTIN MINNESOTA

WHEREAS, the City of Austin (the “**City**”) is a municipal corporation of the State of Minnesota; and

WHEREAS, the City owns and operates Austin Utilities, a municipal utility, by and through its Austin Utilities Board of Commissioners; and

WHEREAS, Austin Utilities is authorized by the provisions of Chapter 10 of the City’s Charter to acquire, purchase, transport, store and manage supplies of electricity necessary to meet the requirements of the residential, commercial, and industrial customers served by such utility; and

WHEREAS, the City is a member of Southern Minnesota Municipal Power Agency (“**SMMPA**”), a municipal corporation and political subdivision of the State of Minnesota that supplies wholesale electricity to its members, including the City, pursuant to existing power sales contracts with its members, including the City; and

WHEREAS, pursuant to Section 10.01 of the Charter of the City, the Austin Utilities Board of Commissioners has the authority to execute and deliver contracts on behalf of the City of Austin related to its purpose and function under the Charter of the City; and

WHEREAS, a ground lease has been drafted for the purpose of leasing to SMMPA certain property in Austin, Minnesota owned by Austin Utilities for purposes of SMMPA’s development of an electric power generation plant thereon, whereby SMMPA can generate and supply additional electricity to support its current and future obligations to its members, including the City; and

WHEREAS, entering into a ground lease with SMMPA is beneficial to Austin Utilities, the City, and all the constituents that receive their utilities through Austin Utilities; and

WHEREAS, the Austin Utilities Board of Commissioners has considered this issue, approved the ground lease, and has requested the Council ratify and approve of the ground lease as required;

NOW, THEREFORE, be it hereby resolved that the City Council of the City hereby approves and ratifies the Austin Utilities Board of Commissioners’ approval of the ground lease with Southern Minnesota Municipal Power Agency with an initial term of fifty (50) years and with an option to extend for an additional period of fifty (50) years, and hereby authorizes Austin Utilities to enter into said ground lease in substantially the form attached hereto as **Exhibit A**, with such changes as Austin Utilities approve as necessary or desirable, such approval to be conclusively evidenced by the execution and delivery thereof by Austin Utilities.

Passed by a vote of Yeas and Nays this 16th day of March, 2026.

Yeas 5

Nays 0

APPROVED:

Stephen M. King, Mayor

ATTEST:

Brianna Wolf, City Clerk

This ordinance was introduced on March 16, 2026; approved on March 16, 2026; was published in the Austin Daily Herald on March 21, 2026, and becomes effective March 28, 2026.

EXHIBIT A

GROUND LEASE

[See Attached]

GROUND LEASE

This GROUND LEASE (this “**Lease**”) is made and entered into as of the _____ day of _____, 2026 (“**Effective Date**”) by and between Austin Utilities, a Minnesota municipal corporation (“**Lessor**”) and Southern Minnesota Municipal Power Agency, a municipal corporation and political subdivision of the State of Minnesota (“**Lessee**”). Each of Lessor and Lessee may be individually referred to as a “**Party**” and may be collectively referred to as the “**Parties**”.

RECITALS

WHEREAS, Lessee intends to develop an electric power generation plant in Mower County, Minnesota (the “**Project**”); and

WHEREAS, Lessor is the owner of certain land located in Mower County, Minnesota and more specifically described in Exhibit A to this Lease (the “**Property**”); and

WHEREAS, Lessee intends to, *inter alia*, construct, erect, install, use, replace, store, repair, operate, remove, and make connections to, as well as all other ancillary activities normally associated with (collectively, the “**Contemplated Use**”) an electric power general plant including, without limitation, the following: transformers, power lines, transmission lines, interconnection and switching facilities, foundations, footings and concrete pads, towers, poles, cross-arms, guy lines, anchors, vaults, cabinets, conduit, fiber, cables, wires and other conductors, extensions of ground grid, control building monitoring systems, foundations for bus extension and air switches, fiber communications, main/utility control buildings, water lines, sanitary sewer lines, storm sewers, gas lines, gates and fences, as well as any and all other equipment that is commonly utilized in connection with electric power generation facilities (the “**Plant Facilities**”) as part of the Project; and

WHEREAS, Lessor and Lessee have been conferring and cooperating as to the most appropriate location for the Plant Facilities and have determined that the Plant Facilities are most appropriately located on that portion of the Property as depicted on Exhibit B to this Lease (the “**Premises**”); and

WHEREAS, Lessee requires sufficient real property rights on, over, under, above, and through, including without limitation the rights of ingress and egress to and from the Premises; and

WHEREAS, Lessor desires to provide Lessee with such property rights through this Lease.

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual benefits to be derived herefrom, the mutual promises provided herein, One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties hereby agree as follows:

ARTICLE 1
LEASE OF PROPERTY

1.1. Lease. Lessor hereby grants, devises and leases to Lessee and Lessee hereby takes and leases from Lessor the Premises, which Premises shall include non-exclusive easement rights for ingress to and egress from the Premises, and easement rights for purposes of installing, maintaining, repairing and replacing utility lines and facilities as are or may be commonly required and utilized to operate and connect to the Plant Facilities for the Contemplated Use thereof.

1.2. Term; Due Diligence. The term of this Lease shall commence as of the Commencement Date (as hereinafter defined) and will terminate upon the date that is the 50th anniversary of the Commencement Date (the “**Expiration Date**”), such period being referred to herein as the “**Initial Term**”. The Commencement Date shall be the date on which Lessee delivers written notice to Lessor that Lessee has obtained its air emissions permit (the “**Air Permit**”) for the Premises. In the event that Lessee does not obtain the Air Permit on or before January 1, 2030, this Lease shall terminate and be of no further force and effect. The Initial Term may be extended in accordance with the terms set forth in Section 7.3. Lessee’s rights pursuant to this Lease will extend beyond the Initial Term as provided for in Article 7 of this Lease. Notwithstanding the foregoing, prior to the Commencement Date, Lessor shall allow Lessee, and Lessee’s agents, access to the Property without charge and at all reasonable times for the purpose of Lessee’s investigation and testing the same, all in accordance with applicable laws. Lessor shall make available to Lessee and Lessee’s Agents without charge all records in Lessor’s possession relating to any Hazardous Materials affecting the Property. Lessee shall pay all costs and expenses of such investigation and testing and shall indemnify and hold Lessor and the Property harmless from all costs and liabilities relating to Lessee’s activities at the Property. Lessee shall further repair and restore any damage to the Property caused by or occurring during Lessee’s testing and investigation, which obligation shall survive the termination of this Lease. If Lessee is not satisfied with the results of Lessee’s testing and investigation of the Property or is otherwise not satisfied with results of Lessee’s due diligence with respect to the Property (collectively, “**Lessee’s Due Diligence**”), Lessee may terminate this Lease by giving written notice of termination to Lessor prior to January 1, 2028 (the “**Due Diligence Expiration Date**”). If Lessee does not so terminate this Lease prior to the Due Diligence Expiration Date, Lessee shall be conclusively presumed to have waived its right to terminate. In the event that this Lease is terminated prior to the Due Diligence Expiration Date, this Lease shall become null and void, and neither party shall be liable for damages or have any further duties or obligations hereunder (except for any obligations that expressly survive the termination of this Lease). Lessee shall have obtained at its sole cost and expense on or before the Due Diligence Expiration Date all final governmental approvals, including any changes to applicable zoning, necessary in Lessee’s judgment in order to make the use of the Premises for the Contemplated Uses. Lessor shall cooperate in all reasonable respects with Lessee in obtaining such approvals, and shall execute such applications, permits and other documents as may be reasonably required in connection therewith, at no out-of-pocket expense to Lessor. If required as part of Lessee’s Due Diligence, the Minnesota Pollution Control Agency shall have issued, at Lessee’s expense, on or before the Due Diligence Expiration Date a no association determination, no further action letter, or other similar assurance/approval with respect to the physical condition of the Property in form and content reasonably acceptable to Lessee.

1.3. Rent Consideration. Within five (5) business days after the Effective Date, Lessee shall pay to Lessor the lease payment of One Dollar (\$1.00) as consideration for this Lease. Notwithstanding anything in this lease to the contrary, in the event that Lessor is no longer a member of Lessee at any time on or after January 1, 2050, then upon written notice thereof from Lessor to Lessee, the rent due under this Lease shall be the Fair Market Rent of the Premises, paid on an annual basis. The "**Fair Market Rent**" of the Premises shall take into account all relevant factors concerning the Premises including, without limitation, the size, quality, and location of the Premises and the creditworthiness of the lessee when compared to Lessee. The Fair Market Rent shall specifically exclude value attributable to Tenant's Plant Facilities. The process for determining the Fair Market Rent shall be as set forth below:

(a) Upon receiving Lessor's notice, Lessee shall have thirty (30) days to notify Lessor in writing of its determination of the Fair Market Rent. Upon receiving Lessee's notice, Lessor shall have thirty (30) days to notify Lessee in writing whether Lessor agrees with Lessee's determination of the Fair Market Rent or if Lessor rejects Lessee's determination of the Fair Market Rent. If Lessor rejects Lessee's determination of the Fair Market Rent, Lessor shall include with its notice Lessor's determination of the Fair Market Rent. Lessee and Lessor shall then negotiate in good faith for sixty (60) days following the delivery of Lessor's rejection notice to Lessee in an attempt to reach an agreement as to the Fair Market Rent. If, however, Lessee and Lessor are unable to reach an agreement, then Lessee shall have the option, by written notice to Lessor within five (5) business days following the end of such sixty (60) day period, to (1) terminate this Lease, or (2) proceed with the appraisal process set forth below. If Lessee shall terminate this Lease, this Lease will terminate on the date that is six (6) months after the date the notice of termination is delivered to Lessor; provided, however, Lessee shall pay to Lessor the Fair Market Rent (as determined by Lessee) prorated for the period of time beginning on the date that Lessor is no longer a member of Lessee (but in no event earlier than January 1, 2050) until the termination date, which amount shall be due on or before the termination date.

(b) If Lessee elects to proceed with the appraisal process, the Fair Market Rent of the Premises shall be determined by an appraisal prepared by a member of the Appraisal Institute (the "**Institute**"), the arrangements for which must be made by Lessee and which must be completed and delivered to Lessor within thirty (30) days after Lessee elects to proceed with the appraisal process. In the event that Lessor does not agree with this appraisal, then Lessor may, at Lessor's sole cost and expense, obtain another appraisal from an Institute member, which second appraisal must be completed and delivered to Lessee within thirty (30) days after Lessor's receipt of Lessee's appraisal. If the two rental rates representing the Fair Market Rent determined by said members differ by less than ten percent (10%), the Fair Market Rent shall be deemed to be the average of the two rental rates in said appraisals. If the two rental rates representing the Fair Market Rent determined by said members differ by more than ten (10%), the appraisers designated by Lessee and Lessor shall, within twenty (20) days after receipt of the second appraisal by Lessor, designate a third Institute member to prepare a third appraisal, which third appraisal shall be completed and delivered to Lessee and Lessor within thirty (30) days after appointment. After completion and delivery of the third appraisal to Lessee and Lessor, the rental rate representing the Fair Market Rent shall be deemed to be the average of the two lower valuations of the three appraisals. Each party shall bear the expense of the Institute member

designated by it and the expense of the third member shall be shared equally by Lessee and Lessor. Each appraiser shall have a minimum of five (5) years' experience appraising fair market rent for properties in Minnesota used for commercial purposes.

(c) Once the determination of the Fair Market Rent is finally determined, it shall be applied retroactively to the first date on which Lessor was no longer a member of Lessee, but in no event earlier than January 1, 2050. The Fair Market Rent shall be paid on the first business day of a calendar year, with any partial years equitably prorated.

(d) Upon the determination of the Fair Market Rent, the parties shall enter into an amendment to this Lease setting forth the applicable Fair Market Rent to be paid annually for the balance of the term.

1.4. Use of Premises and Quiet Enjoyment. Subject to the provisions of Article 4 of this Lease, during the Initial Term (and any extensions thereof) Lessee will have exclusive use of the Premises for the Contemplated Use of the Plant Facilities and will peacefully hold and enjoy all of the rights granted by this Lease without hindrance or interruption by Lessor or any person lawfully or equitably claiming by, through, or under Lessor, or Lessor's successor(s) in interest. In furtherance of the foregoing, and not in limitation thereof:

(a) Lessee may, at Lessee's cost and expense:

i. Improve the Premises, including, without limitation, grading, paving, laying foundations and footings, and other modifications to the natural state of the Premises in furtherance of the Contemplated Use of the Plant Facilities; and

ii. Install, place, or otherwise locate any Plant Facilities or other equipment reasonably necessary for the Contemplated Use of the Plant Facilities on, under, above, or through the Premises; and

iii. Install gates, fences, and other devices limiting or restricting access to the Premises as Lessee deems necessary or appropriate for the security, safety, and protection of the Plant Facilities.

(b) Lessor will:

i. Have no ownership interest in or to any improvements to the Premises, including, without limitation, the Plant Facilities, and hereby expressly waives any and all statutory and common law claims or rights that Lessor may otherwise have or has in or to the Plant Facilities; and

ii. Not conduct any activity, nor grant any rights to a third party which would unreasonably interfere with the rights granted to Lessee hereunder and in and to the Premises or with Lessee's Contemplated Use of the Plant Facilities.

1.5 Property Taxes and Assessments. If and to the extent the Property becomes subject to property taxes or assessments due to the Plant Facilities or Lessee's use of the Premises, Lessee shall timely pay any such property taxes and assessments; provided, however, if the Property

becomes subject to property taxes or assessments due to any improvements made by Lessor or Lessor's use of the Property (excluding the Premises), then Lessor shall timely pay any such property taxes and assessments. If the Property becomes subject to property taxes or assessments due to improvements made to the Property by both parties or by both parties' use of the Property, the parties agree to equitably prorate such property taxes and assessments based on each party's improvements to the Property (and/or their use thereof if use is the basis for any such property taxes or assessments) and each party shall timely pay its proportionate share of such property taxes and assessments.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES OF THE PARTIES

2.1. Of Lessor to Lessee. Lessor hereby represents, warrants, and covenants to Lessee the following:

(a) Lessor has good and marketable title to the Property, has the authority to enter into, to execute, and to deliver this Lease and has duly authorized the execution and delivery of this Lease.

(b) The Property is not subject to any dedication, easement, right-of-way, reservation in patent, covenant, condition, restriction, lien, or encumbrance that would prohibit or would interfere materially with the use of the Premises for the Contemplated Use of the Plant Facilities.

(c) There are no liens, mortgages, or encumbrances on title to the Property except as provided in Exhibit C (the "**Encumbrances**") and this Lease in no way violates any obligation or covenant under the Encumbrances.

(d) Lessor will not interfere, and will cooperate at no expense to itself, with any contests contemplated by Section 2.2(c) of this Lease.

2.2. Of Lessee to Lessor. Lessee hereby represents, warrants, and covenants to Lessor as follows:

(a) Lessee has authority to enter into, execute and deliver this Lease, and has duly authorized the execution and delivery of this Lease.

(b) Lessee has the knowledge, skill, and experience necessary to undertake the Contemplated Use of the Plant Facilities on, under, above, and through the Premises.

(c) Lessee will undertake the Contemplated Use of the Plant Facilities in accordance with all applicable laws, ordinances, orders, regulation of any government agency (state, federal, local, or otherwise), rules, codes, and Good Utility Practice (as defined in Section 7.1 of this Lease); provided, however, that Lessee has the right, in its sole discretion and at its sole cost and expense, to contest the validity or applicability of any law, ordinance, order, rule, request, or regulation of any governmental agency or entity that is applicable to the Contemplated Use of the Plant Facilities.

(d) Lessee will maintain the Plant Facilities in good working condition and repair throughout the term of this Lease.

(e) Lessee shall not permit any liens to be filed against the Premises arising out of any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or on behalf of Lessee.

ARTICLE 3 INSURANCE

3.1. Insurance Coverages. Each of the Parties shall, at their own expense, be responsible for assuring that insurance coverages, as would be customary and reasonable for a similarly situated party performing the activities carried out by the party at such time, are maintained, including, without limitation, adequate coverage to cover any personal injuries or accidents that could reasonably be expected as a direct result of the activities conducted by such Party or such Party's employees, agents, invitees and/or contractors. All applicable insurance policies maintained by each Party, shall contain provisions whereby its insurers waive all rights of subrogation against the other Party and endeavor to provide thirty (30) calendar days advance written notice to the other Party prior to cancellation.

3.2. Evidence of Insurance. Upon request, a Party shall provide to the other Party satisfactory evidence of the insurance required by this Lease.

3.3. Self-Insurance. Notwithstanding the foregoing, either Party may self-insure to the extent it maintains a self-insurance program provided the coverages thereunder are customary and reasonable for a similarly situated Party performing the activities carried out by the Party.

3.4. Incident Reporting. Each Party agrees to report to the other Party in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage occurring at the Property or arising out of this Lease.

ARTICLE 4 HAZARDOUS MATERIALS

4.1. Use of Hazardous Materials. Lessee (a) will not use, store, dispose of or release on the Property or (b) cause or permit to exist or be used, stored, disposed of or released on the Property any Hazardous Materials, except in such quantities as may be required by the Contemplated Use of the Plant Facilities and only if such use is in full compliance with all Environmental Laws applicable at the time of use.

4.2. Definitions. For purposes of this Lease:

(a) **“Environmental Law”** means all state, federal, or local laws, statutes, ordinances, rules, regulations or orders pertaining to the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“**CERCLA**”) and the Resource Conservation and Recovery Act of 1976 (“**RCRA**”), the Clean Air Act, 42 U.S.C. § 7401 et seq. (“**CAA**”), the Clean Water Act, 33 U.S.C. § 4321 et seq., the Endangered Species Act, 16 U.S.C. § 1531 et seq. (“**ESA**”), the Safe Drinking Water Act, 42 U.S.C. § 300f et seq. (“**SDWA**”), the Federal Insecticide,

Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq. (“**FIFRA**”), the Hazardous Substances Transportation Act, 49 U.S.C. § 1801 et seq. (“**HSTA**”), the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. (“**TSCA**”), and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq. (“**EPCRA**”), and any state or local laws relating to permits, local land use control ordinances or similar laws, and any state or local laws implementing or substantially equivalent to the foregoing federal requirements, and other similar laws as each may be amended, supplemented, expanded or replaced from time to time; and the term

(b) “**Hazardous Materials**” means (1) any substance, the presence of which requires investigation, remediation, or other response or corrective action under Environmental Law, or (2) any substance which is or hereafter becomes defined as a hazardous waste, hazardous substance, extremely hazardous substance, Hazardous Materials, hazardous matter, hazardous chemical, toxic substance, toxic chemical, pollutant or contaminant, or other similar term, in or pursuant to any Environmental Law, or (3) any asbestos or asbestos-containing material, PCBs or equipment or articles containing PCBs, petroleum, diesel fuel, gasoline or other petroleum hydrocarbons.

ARTICLE 5 INDEMNIFICATION

5.1. Indemnity of Lessor. Lessor will indemnify, defend and hold harmless (including, without limitation, reasonable attorneys’ fees) Lessee and Lessee’s members, managers, and owners and their respective employees, agents, representatives, heirs, successors and assigns (collectively, the “**Lessee Parties**”):

(a) Against any claim, liability or loss arising from damage to property or physical injuries or death of any person, in each case to the extent caused by the negligence or willful misconduct of the Lessor or its employees, contractors, subcontractors, consultants, agents, invitees, except to the extent such damages or injuries are caused by the negligence or willful misconduct of any of the Lessee Parties; and

(b) Against any and all breaches of Lessor’s representations, warranties, covenants or other obligations contained in this Lease.

5.2. Indemnity of Lessee. Lessee will indemnify, defend and hold harmless (including, without limitation, reasonable attorneys’ fees) Lessor and Lessor’s members, managers, and owners and their respective employees, agents, representatives, heirs, successors and assigns (collectively, the “**Lessor Parties**”):

(a) Against any and all claims, liabilities or losses arising from damage to property or physical injuries or death of any person, in each case to the extent caused by the negligence or willful misconduct of the Lessee or its employees, contractors, subcontractors, consultants, agents, invitees, except to the extent such damages or injuries are caused by the negligence or willful misconduct of any of the Lessor Parties; and

(b) Subject to Section 5.3 of this Lease, against any and all breaches of Lessee’s representations, warranties, covenants, or other obligations contained in this Lease.

5.3. Hazardous Materials Indemnity.

(a) Lessee will indemnify, defend, protect and hold Lessor and the Lessor Parties harmless from and against any and all claims, actions, suits, proceedings, losses, costs, damages, liabilities (including, without limitation, sums paid in settlement of claims), deficiencies, fines, penalties or expenses (including, without limitation, reasonable attorneys' fees and consultants' fees, investigation and laboratory fees, court costs and litigation expenses) (collectively, "Losses") arising from (a) any breach of Lessee's obligation in Article 4.1 of this Lease, or (b) any release of Hazardous Materials caused by Lessee or its agents, employees, or contractors that results in contamination of the Property, except to the extent such release is caused or exacerbated by Lessor or is in existence as of the Effective Date. This indemnity includes, without limitation, all Losses relating to, (x) personal injury (including sickness, disease or death), property damage, nuisance, pollution, contamination, spill or other effect on the environment, (y) any investigation, monitoring, repair, clean-up, treatment or detoxification of the Property which may be required by any Environmental Law or other law; and (z) the preparation and implementation of any closure plan, remediation plan or other required action in connection with the release of any Hazardous Materials by Lessee, or a Lessee agent, employee, or contractor on the Property.

(b) Lessor will indemnify, defend, protect and hold Lessee and the Lessee Parties harmless from and against any and all Losses arising from any release of Hazardous Materials caused by Lessor or its agents, employees, or contractors, except to the extent such release is caused or exacerbated by Lessee. This indemnity includes, without limitation, all Losses relating to, (x) personal injury (including sickness, disease or death), property damage, nuisance, pollution, contamination, spill or other effect on the environment, (y) any investigation, monitoring, repair, clean-up, treatment or detoxification of the Property which may be required by any Environmental Law or other law; and (z) the preparation and implementation of any closure plan, remediation plan or other required action in connection with the release of any Hazardous Materials by a Lessor agent, employee, or contractor on the Property, or that existed prior to the Effective Date.

**ARTICLE 6
ASSIGNMENT**

6.1. Prohibitions on Lessor. Lessor may not sell or encumber the Premises (except as represented in Article 3 of this Lease) without the written consent of Lessee, such consent not to be unreasonably withheld or delayed. Any such sale or encumbrance of the Premises must be performed in recognition of this Lease and must allow for Lessee's continue quiet enjoyment of the Premises pursuant to the terms of this Lease.

6.2. Assignment by Lessee. Subject to the provisions of Section 6.3 of this Lease, Lessee may not assign this Lease, in whole in part, or sub-lease the Premises without the written consent of Lessor, such consent not to be unreasonably withheld or delayed. In the event:

(a) This Lease is assigned, such assignee must assume all obligations of this Lease in writing; or

(b) Lessee sub-leases the Premises, sub-lessor must assume all of the obligations of this Lease in writing; provided, however, Lessee shall not be released from liability in connection and will be jointly and severally liable with Lessee to Lessor pursuant to this Lease.

Notwithstanding the foregoing, Lessor, in its sole discretion, may consent to an assignment of this Lease or sub-lease of the Premises in which the assignee or sub-lessee assume all obligations pursuant to this Lease and upon which Lessee will have no further obligations pursuant to this Lease.

6.3. Lessee Financing. Notwithstanding any other provision of this Lease to the contrary, Lessee may, at any time, freely assign this Lease or sublease the Premises without consent of Lessor:

(a) To one or more entities or agencies which is controlled by, controls, or is under common control with Lessee or parent of Lessee; or

(b) To any entity or agency that (i) acquires Lessee; (ii) acquires all, or substantially all, of the assets of Lessee, or (iii) that is the resulting entity or agency of a merger or consolidation of Lessee.

Any entity or agency for which such assignment or sublease made pursuant to this Section 6.3, shall be an “**Assignee**”. For each such assignment or sublease, Lessee will provide to Lessor written notice within sixty (60) days of such assignment or sublease along with a written instrument providing the terms of such assignment or sublease, and binding such Assignee to the terms of this Lease.

ARTICLE 7 REMOVAL OF PLANT FACILITIES; EXTENSION OF INITIAL TERM

7.1. Obligation to Remove. Lessee will have up to twenty-four (24) months from the date of termination of this Lease to remove the Plant Facilities from the Premises and return to the Premises to a reasonably merchantable state recognizing (a) the necessary grading and other improvements to the Premises that are required for the Contemplated Use; and (b) the then prevailing utility industry standards for the decommissioning and demolition of the Plant Facilities; provided, however, that Lessee need not act beyond the requirements of (y) any applicable laws, regulations, rules, orders, ordinances, and other governmental requirements applicable to the decommissioning of an electric power generation plant; and (z) Good Utility Practice. For the purposes of this Lease, “**Good Utility Practice**” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

7.2. Negotiate for Sale. Notwithstanding the provisions of Section 7.1 of this Lease, the Parties may negotiate for sale of the Plant Facilities by Lessee to Lessor in lieu of Lessee's obligations pursuant to Section 7.1 of this Lease.

7.3. Extension of Initial Term. Lessee has an option (the "**Extension Option**") to extend the Expiration Date for an additional period of fifty (50) years (the "**Extension Term**") with respect to the Premises. Lessee may exercise its Extension Option, provided an Event of Default does not exist as of the date of exercise of the Extension Option and as of commencement date of the applicable Extension Term. The Extension Option is exercisable by written notice ("**Lessee's Notice**") to Lessor given at least nine (9) months prior to the Expiration Date. The extension of the Lease shall be on all of the same terms and conditions set forth in this Lease for the Initial Term.

ARTICLE 8 TERMINATION AND DEFAULT

8.1. Termination by its Terms. This Lease will terminate upon the expiration of the Initial Term as the same may have been extended by the Parties.

8.2. Termination by Mutual Agreement. The Parties may agree to terminate this Lease upon mutual agreement prior to the Expiration Date.

8.3. Termination for Convenience. Lessee may terminate this Lease prior to the expiration of the Initial Term upon twelve months' notice to Lessor.

8.4. Termination for Default. A Party may terminate this Lease due to an Event of Default by the other Party as provided for in Section 8.5 of this Lease upon thirty (30) days' notice following the expiration of the Cure Period (as defined below).

8.5. Default. A Party's failure to comply with any provision of this Lease constitutes an "**Event of Default**". The Party who is claiming the other Party failed to comply with any provision of this Lease ("**Non-Defaulting Party**") will give the Defaulting Party notice of the claimed Event of Default ("**Notice of Default**"). The Party who failed to comply with any provision of this Lease ("**Defaulting Party**") will have thirty (30) days from receipt of the Notice of Default to cure such Event of Default or such reasonably longer period of time if such Event of Default is reasonably incapable of being cured within such thirty (30) day period provided that the Defaulting Party commences to cure such default within such thirty (30) day period and diligently pursues the same until completion (the "**Cure Period**"). If such Event of Default is not cured within the Cure Period, the Non-Defaulting Party may terminate this Lease pursuant to Section 8.4 of this Lease.

8.6. Survival. Section 1.2, Article 5 and Section 7.1 of this Lease will survive its termination to the extent necessary for the enforcement of the indemnification obligations by one Party against the other Party and to ensure removal of the Plant Facilities as contemplated by this Lease.

ARTICLE 9
OTHER TERMS AND PROVISIONS

9.1. Limitation on Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, NO PARTY IS ENTITLED TO, AND EACH PARTY HEREBY WAIVES, ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO THIS LEASE OR ANY ACTION TAKEN IN CONNECTION WITH THIS LEASE; PROVIDED, HOWEVER, THAT THE FOREGOING WAIVER DOES NOT APPLY TO OR AFFECT A PARTY'S OBLIGATIONS HEREUNDER WITH RESPECT TO ANY THIRD-PARTY INDEMNITY CLAIMS THAT ARE SUBJECT TO THE TERMS OF THIS LEASE.

9.2. Entire Agreement; Incorporation of Recitals and Exhibits. This Lease constitutes the entire agreement between the Parties respecting the subject matter hereof. The Recitals set forth above, and all exhibits attached hereto, are hereby incorporated by reference and made a part of this Lease as though fully set forth herein.

9.3. Successors. The provisions of this Lease will extend to and be binding upon Lessor and Lessee and their respective legal representatives, successors, and assigns.

9.4. No Waiver. No waiver of any Event of Default hereunder will be implied from any omission to take any action on account of such Event of Default if such Event of Default persists or is repeated, and no express waiver will affect any Event of Default other than the Event of Default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Lessor or Lessee will not be construed as a waiver of a subsequent breach of the same covenant, term, condition, or other obligation under this Lease.

9.5. Memorandum of Lease. This Lease will not be recorded in the records of the county in which the Property is located. Rather, promptly after the Effective Date, the Parties will mutually record, at Lessee's sole cost and expense, a memorandum of this Lease (the "**Memorandum**") substantially in the form of Exhibit D attached hereto. The Parties agree that upon the expiration or earlier termination of this Lease, the Parties will execute a terminate of the Memorandum to evidence the termination or expiration of this Lease, as the case may be.

9.6. Interpretation. Any reference herein to the singular as appropriate includes the plural and any reference herein to the plural as appropriate includes the singular. Reference to Lessee includes, without limitation, any and all successors and assignees of Lessee. References to Lessor herein includes, without limitation, any and all successors and assignees of Lessor.

9.7. Headings. Headings in this Lease are for convenience purposes only and do not constitute and are not a part of this Lease and will have no effect upon the construction or interpretation of any part of this Lease.

9.8. Notices. All notices or other communications required or permitted under this Lease will, unless otherwise provided herein, be in writing, and will be personally delivered, delivered by reputable overnight courier, or sent by registered or certified mail, return receipt requested and postage prepaid at the addresses set forth below. Notices personally delivered will

be deemed given on the day so delivered. Notices given by overnight courier will be deemed given on the first business day following the mailing date. Notices mailed as provided herein will be deemed given on the third business day following the mailing date. Any Party may change its address for purposes of this Section 9.8 by giving written notice of such change to the other Party in the manner provided in this Section 9.8.

If to Lessor:

Austin Utilities
1908 14th Street NE
Austin, MN 55912
Attn.: General Manager

If to Lessee:

Southern Minnesota Municipal Power Agency
500 1st Avenue SW
Rochester, MN 55902

9.9. Governing Law. This Lease will be interpreted and enforced in accordance with the laws of the State of Minnesota.

9.10. Counterparts. This Lease may be executed in any number of counterparts each of which will be deemed an original, but all of which together will constitute one and the same instrument.

9.11. No Partnership. Nothing contained in this Lease is intended to create, nor will anything contained in this Lease be deemed or construed to create, the relationship of principal and agent, partnership, joint venture, or any other association between the Parties.



9.12. Definition of Premises. Either Party to this Lease, or its successors in title, may, at such Party's sole expense, further define the Premises including any utility and driveway easement areas created by this Lease, by recording an amendment to this Lease executed by both Parties, containing legal descriptions certified in such instrument by a Minnesota registered land surveyor that matches the location, as closely as reasonably possible, of the Premises and the driveway and utility easement areas. Upon the recording of any such amendment, the legal description(s) contained in such amendment shall be recognized as the valid legal description(s) of the Premises for all purposes.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Lease to be executed by authorized representatives of the Parties as of the Effective Date.

LESSOR:

AUSTIN UTILITIES,
a Minnesota municipal corporation,

By:  
Its: BOARD PRESIDENT General Manager

LESSEE:

SOUTHERN MINNESOTA MUNICIPAL
POWER AGENCY, a municipal corporation
and political subdivision of the State of Minnesota

By: _____

Its: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Austin, County of Mower, State of Minnesota, described as follows:

That part of the North Half of the Northwest Quarter of Section 26 lying East of the centerline of the Red Cedar River and West of the right-of-way of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company; all in Township 103 North, Range 18 West, Mower County, Minnesota.

(Abstract Property)

Tax Parcel Number: 34.890.0040

**EXHIBIT B
DEPICTION OF THE PREMISES**



**EXHIBIT C
ENCUMBRANCES**

1. Right of way, reservations and restrictions as contained in the Warranty Deed, dated September 8, 1964, recorded September 9, 1964, as Document No. 269991.
2. Easement for an electric transmission and/or distribution lines purposes, together with any incidental rights, in favor of Austin Utilities of the City of Austin, Minnesota, as contained in the Right of Way Easement, dated January 5, 1970, recorded January 9, 1970, as Document No. 292650.

As assigned by Conveyance and Assignment of Easement Rights and Bill of Sale dated August 21, 1995, recorded September 13, 1995, as Document No. 439346.

3. Easement for electric transmission and distribution line purposes, together with any incidental rights, in favor of Southern Minnesota Municipal Power Agency, a Minnesota public corporation, as contained in the Quit Claim Deed, dated June 11, 1984, recorded June 11, 1984, as Document No. 362991.

As affected by Easement dated December 16, 1985, recorded April 10, 1986, in Book 408 of Deeds, Page 48, as Document No. 372939.

As amended by Amendment to Easement dated September 1, 1995, recorded September 13, 1995, as Document No. 439347.

4. Easement for electric transmission line purposes, together with any incidental rights, in favor of Cooperative Power Association (CPA), a Minnesota cooperative corporation, as contained in the Easement, dated May 22, 2001, recorded June 20, 2001, as Document No. 492953.
5. Terms and provisions as contained in the Airport Safety Zoning Ordinance for Austin Municipal Airport, dated March 6, 2024, recorded March 12, 2024, as Document No. A680578.

(As disclosed by Commitment for Title Insurance, Commitment No. NCS-1291270-MPLS, issued by First American Title Insurance Company dated February 2, 2026.)

EXHIBIT D
FORM OF MEMORANDUM OF LEASE

MEMORANDUM OF GROUND LEASE

NOTICE IS HEREBY GIVEN BY THIS MEMORANDUM (this “Memorandum”), that under and pursuant to a separate agreement entitled **GROUND LEASE** (the “Lease”) dated effective as of _____, 2026 (the “Effective Date”), by and between Austin Utilities, a Minnesota municipal corporation (“Lessor”), and Southern Minnesota Municipal Power Agency, a municipal corporation and political subdivision of the State of Minnesota (“Lessee”), Lessor, as the owner of that certain real property located in Mower County, Minnesota legally described on **Exhibit A** attached hereto (the “Property”), has leased to Lessee a portion of the Property, which portion is depicted on **Exhibit B** attached hereto and which is more particularly described in the Lease (the “Premises”). All capitalized terms used in this Memorandum, not otherwise defined, have the meanings assigned in the Lease.

The Lease contains the following principal terms, among others:

1. Grant. Lessor has leased, and hereby confirms a lease, to Lessee, and Lessee leases from Lessor, the exclusive use of the Premises to, *inter alia*, construct, erect, install, use, replace, store, repair, operate, remove, and make connections to, as well as all other ancillary activities normally associated with an electric power generation plant including, without limitation, the following: transformers, power lines, transmission lines, interconnection and switching facilities, foundations, footings and concrete pads, towers, poles, cross-arms, guy lines, anchors, vaults, cabinets, conduit, fiber, cables, wires and other conductors, extensions of ground grid, control building monitoring systems, foundations for bus extension and air switches, fiber communications, main/utility control buildings, water lines, sanitary sewer lines, storm sewers, gas lines, gates and fences, as well as any and all other equipment that is commonly utilized in connection with electric power generation facilities. The Premises further includes non-exclusive easement rights for ingress to and egress from the Premises, and easement rights for purposes of installing, maintaining, repairing and replacing utility lines and facilities as are or may be commonly required and utilized to operate and connect to the Plant Facilities for the Contemplated Use thereof.

2. Term. The Lease is effective as of the Effective Date and shall, unless otherwise terminated or extended in accordance with the provisions of the Lease, continue in effect for fifty (50) years from the Commencement Date of the Lease.

3. Notice. All notices and other required or permitted communications under the Lease shall be in writing, and shall be addressed respectively as follows:

Lessor:
Austin Utilities
1908 14th Street NE
Austin, MN 55912
Attn.: General Manager

Lessee:
Southern Minnesota Municipal Power Agency
500 1st Avenue SW
Rochester, MN 55902

All notices or other communications required or permitted under the Lease will, unless otherwise provided herein, be in writing, and will be personally delivered, delivered by reputable overnight courier, or sent by registered or certified mail, return receipt requested and postage prepaid to the Parties set forth above. Notices personally delivered will be deemed given on the day so delivered. Notices given by overnight courier will be deemed given on the first business day following the mailing date. Notices mailed as provided herein will be deemed given on the third business day following the mailing date.

4. Assignment. The Lease may be assigned by either Party under terms and conditions provided for in the Lease.

5. Binding. The Lease constitutes a covenant running with the land and shall extend to and be binding upon the Parties thereto and their respective heirs, administrators, personal representatives, successors and assigns.

6. No Waiver or Modification. This Memorandum is executed for the purpose of placing of record notice of the Lease and the terms and provisions thereof. Nothing herein will, nor will it be interpreted to, amend, modify or waive any of the terms and conditions of the Lease.

7. Counterparts. This Memorandum may be executed by the parties in any number of counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank]


IN WITNESS WHEREOF, the parties have caused this Memorandum to be signed and executed as of the Effective Date.

LESSOR:


LESSEE:

AUSTIN UTILITIES,
a Minnesota municipal corporation,

SOUTHERN MINNESOTA MUNICIPAL
POWER AGENCY, a municipal corporation
and political subdivision of the State of
Minnesota

By: 
Printed Name: Treer Hjelvas
Title: Board President

By: _____
Printed Name: _____
Title: _____

By: 
Name: Tom Dankert
Title: General Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF Mower)

The foregoing instrument was acknowledged before me this 17th day of February, 2026, by Tyler Hulsebus, President, ^{And} Tom Dankert ^{General Manager} of ~~between~~ Austin Utilities, a Minnesota municipal corporation, on behalf of the corporation.



Sarah J. Douty
Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2026, by _____, the _____ of Southern Minnesota Municipal Power Agency, a municipal corporation and political subdivision of the State of Minnesota, on behalf of the municipal corporation and political subdivision.

Notary Public

**EXHIBIT A
TO
MEMORANDUM OF GROUND LEASE**

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Austin, County of Mower, State of Minnesota, described as follows:

That part of the North Half of the Northwest Quarter of Section 26 lying East of the centerline of the Red Cedar River and West of the right-of-way of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company; all in Township 103 North, Range 18 West, Mower County, Minnesota.

(Abstract Property)

Tax Parcel Number: 34.890.0040

**EXHIBIT B
TO
MEMORANDUM OF GROUND LEASE**

DEPICTION OF THE PREMISES

