

**FOURTH RESTATED
AGENCY AGREEMENT**

**Central Minnesota Municipal Power Agency
Fourth Restated Agency Agreement
January 13, 2010**

**Originally Adopted
July 1, 1987**

**Restated as of January 15, 1997
Second Restatement as of August 11, 2004
Third Restatement as of May 24, 2006**

AGENCY AGREEMENT

This Fourth Restated Agency Agreement hereinafter the "Agreement", dated this 13th day of January, 2010, among the Member Cities listed on Attachment 1, each of which is presently a city organized and existing under the laws of the State of Minnesota, but which may, in the future, include cities organized and existing under the laws of other states, hereinafter referred to collectively as the ("Cities").

WITNESSETH

WHEREAS, Minnesota Statutes, Sections 453.51 through 453.62 (hereinafter referred to as the "Act"), permits any two or more cities which are organized and existing under the laws of Minnesota or a city charter adopted pursuant thereto, or the laws of the state in which they are located or a city charter adopted pursuant thereto, and which are authorized by such laws or charter to engage in the local distribution and sale of electric energy, to establish and create a municipal power agency; and

WHEREAS, each of the Cities is authorized either by the laws of the State of Minnesota, the laws of the state in which it is located or by its city charter adopted pursuant thereto, to engage in the local distribution and sale of electric energy and desires to exercise the powers enumerated in the Act through the formation of a municipal power agency; and

WHEREAS, the governing bodies of each of the Cities duly authorized and approved the organization and formation of the Central Minnesota Municipal Power Agency, hereinafter the "Agency."

NOW THEREFORE, the Cities do hereby covenant and agree, in consideration of the foregoing and in consideration of the covenants and agreements contained herein, as follows:

Article I.

Creation and Purpose

Section 1. Basic Purpose. A municipal power agency has been created and incorporated as a municipal corporation and a political subdivision of the State of Minnesota under the provisions of the Act, to exercise part of the sovereign powers of said State, and in furtherance thereof to exercise all of the powers granted to a municipal power agency by the Act, including but not limited to: resource planning, participation resource projects, appropriate legal and administrative actions, development and implementation of programs, portfolio management, generation and transmission ownership, conservation (including but not limited to energy conservation programs and demand side management), satisfaction of renewable energy obligations, carbon management and other activities as directed by the member Cities, hereinafter the “Members”.

Section 2. Project-Focused Agency. The Agency, among other activities, develops, implements, owns, coordinates, procures and manages individual generation and transmission projects, capacity and energy supply portfolios, transmission, demand-side management programs, energy conservation and renewable projects and programs on behalf of the Members that enable economies of scale and other benefits for the Members as a whole. Based on their individual needs, the Agency allows individual Members to select or reject participation in individual generation and transmission projects, capacity and energy supply portfolios, demand-side management or energy conservation projects and programs, whether developed by the Agency or others. No Member may be compelled by the Agency to participate in a project or program or to enter into an agreement requiring the issuance of the Member’s own bonds or Agency bonds to support the Member’s own participation in a project or program in which the Member does not elect to participate. Agency bonding and financing shall be approved as provided in Article X.

Section 3. Obligations of the Members. In addition to the obligations of the Agency to act on behalf of and perform duties assigned by the Members, the Members acknowledge that the Agency will from time to time be assigned obligations by Federal law or regulation, State statute, rule or regulation, or other requirements that represent obligations that the Agency must fulfill on behalf of the Members. Such obligations may include but are not limited to maintaining minimum generation capacity reserves and achieving energy conservation or renewable energy goals. The obligations may also include other actions as may be necessary to comply with Federal, State or other regulations on permits for construction or operation of facilities the Agency develops or manages on behalf of the Members.

The Members shall act in good-faith to assist the Agency in fulfillment of its obligations and activities, compliance with federal law and regulation, State Statutes, rules and requirements, and also for the betterment of the Members as a whole.

Article II.
Name

The name of this municipal power agency, created by the original Agency Agreement dated July 1, 1987, is the Central Minnesota Municipal Power Agency.

Article III.
Members

Section 1. Members. The current Members are listed on Attachment 1. Membership may be modified from time-to-time pursuant to this Agreement. New Members may be added and current Members may withdraw as provided herein. Each of the Members represents and warrants to all of the other Members and to the Agency that it is a city duly organized and existing under the laws of the State of Minnesota, under a city charter duly adopted pursuant to the Constitution and laws of the State of Minnesota or is a city duly organized and existing under the corresponding and applicable laws of another state or a city charter adopted pursuant thereto; that it is authorized by such laws or charter to engage in and is now engaged in the local distribution and sale of electric energy; that the resolutions of its governing bodies¹ required by the Act have been duly and validly adopted and have not been amended or repealed.

A Member is an entity that fulfills all of the qualifications of membership including but not limited to the qualifications recited in Exhibit 1 attached hereto and incorporated herein by reference. After May 1, 2009, all new candidates for membership must be approved for Membership by the Board of Directors, hereinafter the "Board", as provided in Article X. The Board may, from time to time, modify or amend these qualifications as authorized by Article X.

For purposes of MN Stat. 453.53, Subdivision 1(b)(3), the Cities which approved the original Agency Agreement dated July 1, 1987 and were the initial Members of the Agency are set forth in the original Agency Agreement that is on file and of record with the Minnesota Secretary of State

Section 2. Services to Non-Members. The Agency may from time-to-time provide on a fee basis, individual and separate services, to other entities which do not fulfill the qualifications for membership as defined in Section 1. Such entities are not Members and, although they may be represented on committees overseeing individual projects or programs in which they participate, as provided in Article VII, Section 3, they are not entitled to representation on the Board nor to the exercise of other rights that inure to Members.

1. In the State of Minnesota the governing bodies are municipal utility commissions and city councils.

The Board will establish appropriate pricing levels for Agency services provided to non-members, including additional margins or charges that may apply to the pricing for such services. Notwithstanding the Board's authority to establish such pricing, only Members shall be entitled to pricing of Agency services that represents cost-based, pro rata shares of actual Agency costs incurred to deliver services.

The Board may, from time-to-time and at its option, designate certain non-Members who do not fulfill the requirements of Section 1 above as Associate Members of the Agency. An Associate Member is defined as an entity that (a) receives and pays for services from the Agency, (b) is interested in tracking ongoing industry developments through association with the Agency, (c) does not fulfill the minimum requirements of a Member defined in Section 1, and (d) is designated by the Board as an Associate Member. The designation "Associate Member" does not qualify an entity for membership, confer eligibility for representation on the Board nor entitle it to Member pricing.

Article IV.

Representatives, Selection and Term

The names and addresses of the persons currently appointed by the Members' governing bodies to act as their Representatives and exercise their powers as Members, are set forth on Attachment 1. Attachment 1 shall be restated from time to time as required to accurately recite the Members and their Representatives.

Each Member and each city which may subsequently become a Member of the Agency shall have one Representative. Each Member's governing bodies shall appoint a person to serve as its Representative and a person to serve as an alternate in the absence of the Representative. Each Representative shall serve as the Representative of the Member until another Representative is appointed by resolutions of the governing bodies of the Member or until removed pursuant to Article IX, Section 6. Each Representative shall be entitled to one vote on behalf of the Member which he or she represents. The governing bodies of each Member shall promptly advise the Agency in writing whenever there is a change in the identity of its Representative or its alternate.

The Representatives of all the Members so designated shall together constitute the Board and each such Representative shall be a Director. The term "Representative" is synonymous with the term "Director." They are used interchangeably in this Agreement. The Representative of each city which becomes a Member after the date of this Fourth Restatement of the Agency Agreement shall automatically and without further action become a Director.

The Board may at its option, consistent with the Bylaws, create, by standing resolution, an Executive Committee of the Board ("Executive Committee"), consisting of the elected officers, other members of the Board, and employees. This Executive Committee may be

charged with the day-to-day operations of the Agency subject to the approved annual budget effective at the time.

Article V.

Registered Office

The address of the registered office of the Agency is 459 South Grove Street, Blue Earth, Minnesota 56013. The location of the registered office may be changed by the Board upon the filing of a certificate of change of location with the Secretary of State of Minnesota, as provided in Minnesota Statutes, Section 453.53 Subd 5.

Article VI.

Obligations of the Members

Section 1. **Members Not Liable.** Neither the Cities which are Members of the Agency, nor their Representatives, nor the Directors, shall be personally liable for any of the obligations of the Agency, except as otherwise provided for herein or as Members may commit themselves by contract or agreement.

Section 2. **Member Contracts or Agreements.** Members of the Agency shall be liable for their full share of all obligations set forth in any and all contracts or agreements entered into by the Member.

Section 3. **Member Liabilities.** Members of the Agency shall be liable for payment of the following obligations, and such additional obligations as may be properly imposed by the Board under the authority of this Agreement:

- (a) The Member's fully-allocated share of the current year budget costs and assessments adopted pursuant to Article XI.
- (b) A withdrawing Member's allocated share of future year budgets as may be adopted by the Board, until the expiration of the Notice Period as provided in Article XIII. In the event that a Member provides the Agency with their Notice of Intent to withdraw from agency membership under Article XIII, it will continue to be obligated to pay not less than its allocated share of Agency budget costs as set out in Article XI, Section 1 and Exhibit 1, until the expiration of the Notice Period.
- (c) A Member shall be responsible for its allocated share of all costs or liabilities incurred by the Agency during the entire time it is a Member of the Agency and those incurred subsequent to the Member's withdrawal from the Agency resulting from decisions made by the Board while it was a Member of the Agency. Such

costs and liabilities may include but are not limited to the Member's allocated share of:

- Compensatory or punitive damages from any civil tort liability, contract liability or criminal liability;
- Fines or penalties resulting from non-compliance with regulatory requirements;
- Financial losses, penalties or damages resulting from energy and capacity purchases or sales; and
- Liabilities arising out of Agency projects in which the Member contractually committed itself to participate, whether or not the project is completed;

Notwithstanding the provisions of Section 3(c), a Member's share of such costs and liabilities arising from Agency activities, other than obligations the Member has entered into through other contracts or agreements, shall not exceed its share of Imputed Equity as defined in Article XVII and as limited by the liquidation value of Agency non-project assets.

Further, a Member's share of all costs and liabilities arising from Agency activities shall be payable as an operating expense solely from the revenues of its electric or other utility system, integrated for financial purposes.

A Member's withdrawal from the Agency shall not relieve the Member from any contractual obligations it has entered into with the Agency through other contracts or agreements, or from its allocated share of obligations the Agency has assumed or otherwise incurred on behalf of the Member; either for that Member individually or collectively with other Members.

Article VII.

Powers

Section 1. General Powers of the Agency. Unless restricted by this Agreement, by the Bylaws, by resolution adopted by a majority of the Directors or by contract or agreement, the Agency may exercise any and all of the powers, rights and privileges granted to municipal power agencies under the Act. However, the Agency shall be subject to the following restrictions:

- (a) It shall only engage in activities which are permitted by the Act or authorized or required by other enabling legislation or regulatory promulgations;

(b) Its income shall not inure to the benefit of any private person or corporation, and

(c) If the Agency is dissolved, all of its remaining non-project assets, after payment of all obligations and indebtedness, shall be distributed to the Members. Disposition of project assets shall be governed by project contracts and agreements.

Section 2. Specific Powers of the Agency. Included among the powers which the Agency may exercise are the following:

(a) The Agency may act as owner and as a planning, coordinating, procuring, managing and negotiating agency for its Members and create individual generation and transmission projects, capacity and energy supply portfolios, transmission, demand-side management, conservation and renewable projects and programs;

(b) The Agency may act as portfolio manager for its Members, including but not limited to planning, development, procurement, management, scheduling and retirement for each and every members' supply, demand-side management, energy conservation and renewable resource portfolios;

(c) The Agency may enter into one or more services contracts with Members, non-members, other agencies or vendors that outsource the day-to-day operations of portions of its activities performed on behalf of the Members;

(d) The Agency may coordinate the design, procurement, installation, operation and retirement of Members' generating plants and transmission. Members may make available to the Agency generating capacity or blocks of capacity and energy for exchange, purchase or sale on a wholesale basis to other Members or to non-members in order to obtain the most efficient and effective use of such facilities for the benefit of all Members. Similarly, Members may make available to the Agency renewable energy credits, carbon credits or other supply-related attributes for exchange, purchase or sale on a wholesale basis to other Members or non-members in order to obtain the most efficient and effective use of such attributes for the benefit of all Members;

(e) The Agency may enter into power sale and transmission agreements with one or more of its Members and with non-members, pursuant to which the Agency agrees to sell and deliver energy or to provide transmission service or associated rights which is available to it, and pursuant to which the Member and the non-member shall take and pay for or shall pay for electric energy or transmission services or associated rights, even if not available to, delivered to or taken by the Member or non-member. Members and non-members shall agree to make all payments required pursuant to such agreements regardless of whether energy or

transmission service or associated rights is being provided to the Member or non-member. Payments by a Member and by non-members under such power sale and transmission agreements will be sufficient, when combined with other Agency revenues, to meet monthly power costs, including the amounts required to pay debt service on any revenue bonds issued, amounts necessary to establish and maintain reasonable reserves, and amounts required to be deposited into any fund or account established by the resolution to issue bonds. Each Member and non-member shall agree to maintain and collect electric service rates or charges sufficient to enable it to make its required payments to the Agency under any such power sale or transmission agreement. Such payments shall be made as an operating expense of the member's electric or other utility system, integrated for financial purposes, solely from the revenues thereof;

(f) The Agency may create, coordinate or develop the design, procurement, marketing, operation and retirement of members' demand-side management, energy conservation or renewable energy programs. Members may make available to the Agency demand-side management or energy conservation impacts for exchange, purchase or sale on a wholesale basis to other Members or non-members in order to obtain the most efficient and effective use of such impacts for the benefit of all Members; and

(g) The Agency may develop, own, procure, provide, administer, coordinate, operate, maintain and retire power supply, transmission, demand-side management, renewable energy or energy conservation programs or projects on behalf of one or more Members or non-members which choose to participate and may issue bonds in sufficient amount to fund the required investment. The Board shall formally create, authorize and declare the formation of any and all such projects or programs. The Board may establish by standing order the process by which such projects or programs shall be managed. Any Member choosing to participate shall agree through separate action of its own governing bodies, as may be required in their community, to charge rates sufficient to produce revenues necessary for retirement of its pro-rata share including step up, if any, of bonds over and above Agency operating cost requirements, and sufficient to generate revenues adequate to cover its share of the project or program. The Agency's portion of any project or program shall be owned by the Agency on behalf of the participating Members and non-members, hereinafter the "Participants."

Section 3. Project and Program Committees. If there is any project or program in which less than all Members participate, the Board, after consultation with the Participants:

(a) May administer the Agency's participation in the project or program, or

(b) May appoint a committee to administer the Agency's participation in the project or program. If appointed, the committee shall include at least one representative of each Participant. The committee's actions shall be of no effect until ratified by the

Board or by the Executive Committee if so delegated by the Board. The committee shall elect a chairman who shall serve as the liaison between the project or program committee and Agency staff. The chairman shall also serve as guardian of the project or program schedule. If the project or program includes non-members, they shall be allowed one representative each on the project or program committee.

Section 4. Scope of Powers. The listing of these powers in this Article VII is not intended in any way to limit the nature or the scope of the powers granted to the Agency by the Act.

Article VIII

Additional Members

Any city organized and existing under the laws of the State of Minnesota or a city charter adopted pursuant thereto, or the laws of the state in which it is located or a city charter adopted pursuant thereto, and authorized by or pursuant to such laws or charter to engage in the local distribution and sale of electric energy, may become a party to this Agreement and a Member under the following conditions:

(a) The city shall file with the Board certified copies of the resolutions of its governing bodies, whereby the city (1) agrees to the provisions of this Agency Agreement and the Bylaws, (2) requests to become a Member, and (3) appoints an initial Representative.

(b) No such city shall become a Member until: (1) its admission is approved at a regular meeting or a special meeting of the Board, the notice for which contains a reference to a vote on admission, by the affirmative vote of the Board in accordance with Article X, (2) it deposits with the Board or agrees to deposit with the Board an amount equal to a pro rata share of the annual assessment for the year in which the new member is admitted as determined by the Board, and (3) it deposits with the Board or agrees to deposit with the Board an amount necessary to establish its required share of Imputed Equity (working capital) in the Agency as determined by the Board.

(c) The Board shall by resolution determine whether admission is approved by the required majority of the Directors and, if it so determines, shall file certified copies of its resolution and the new Member's governing body resolutions with the Secretary of State and shall file such documents as are required by the state of a Member from another state.

(d) Upon such filing, the city shall become a Member for all purposes of the Act, this Agreement and the Bylaws, and shall have the same rights, duties and obligations hereunder as the Cities constituting the then-current Members.

Article IX

Board of Directors

Section 1. Powers Vested in the Board. The powers of the Agency shall be exercised by the Board in which shall be vested all of the powers conferred on the Agency by the Act and this Agreement. The powers of the Board shall include but shall not be limited to the following:

- (a) Issuance of bonds, notes or other indicia of indebtedness of the Agency which specifically requires an affirmative vote of the Board as defined in Article X;
- (b) Approval by the Agency of any contract payable primarily from assessments;
- (c) Approval by the Agency of any power supply subscription contract, but only if accompanied by supplemental agreements with each participant for their respective shares of the contract subscription;
- (d) Adoption and amendment of the annual budget, if such budget requires the assessment of expenses to Members as provided in Article XI;
- (e) Admission of a new Member as provided in Article VIII or expulsion of a Member as provided in Article XIV;
- (f) Adoption or amendment of the Bylaws as provided in Article XVI;
- (g) Modification or amendment of Exhibit #1; and
- (h) Dissolution of the Agency.

Section 2. Risk Management Policy. The Board shall establish, amend and revise from time to time, an enterprise risk management policy, and said policy shall be observed in all affected transactions. The Board shall, annually or more frequently, review the enterprise risk management policy. The Board, as a risk management tool, shall reasonably insure all insurable activities.

Section 3. Board Makeup. The Representatives of the Cities (Members) shall be the directors and constitute the Board. Any Director whose term has expired but who has not been replaced shall continue as a Director until so replaced.

Section 4. Term of Directors. If the term of a Representative acting as a Director should expire or should such Representative resign or become incapable of acting for any

reason, the successor to such Representative, appointed by the Member in accordance with Article IV, shall assume the vacancy on the Board.

Section 5. Board Officers. The Board shall elect annually, from its number a President, a Vice-President, a Secretary and a Treasurer. Any such officer may be removed by the Board as such officer with or without cause.

Section 6. Removal of Directors. Directors may be removed for cause at the annual meeting of the Board or at a special meeting of the Board, the notice for which contains a reference to a vote on removal, by the affirmative vote of two-thirds of all of the Directors. Any vacancy created thereby will be filled for the unexpired term by the alternate Representative or a new Representative appointed by the Member.

Section 7. Board Meetings. Meetings of the Board shall be held in accordance with the provisions of the Bylaws, the Act and other applicable State laws.

Article X

Matters Requiring Specific Board Approval

Section 1. Specific Approval by Board. Action on any of the following matters shall only be undertaken by the Agency pursuant to a resolution adopted by the Board:

- (a) Amendment of this Agency Agreement pursuant to Article XVIII, Section 5 and Minnesota Statutes Section 453.53, Subd. 9;
- (b) Termination of this Agreement and dissolution of the Agency pursuant to Article XV;
- (c) Amendment of the minimum qualifications for membership as provided on Exhibit 1;
- (d) Approval of the addition of a new Member who fulfills the requirements of Exhibit 1;
- (e) Expulsion of a Member as provided in Article XIV;
- (f) Election, removal and compensation of officers as provided in Article IX;
- (g) Approval of cost allocation principles to be used in development of annual budgets and assessments as provided in Article XI, Section 4; and
- (h) Approval of Agency financing in any amount and incurrence of any financial obligation or contract exceeding twelve (12) months in length.

Section 2. Approvals – Double Majority. Each of the matters set forth in Section 1 above shall require the approval of a double majority of the full membership of the Board, defined as both a majority of the total Megawatts of retail load of all of the Members and a majority of all of the Directors, with the exception that financing approved under Section 1(h) for projects or programs will be authorized pursuant to the terms of the applicable agreement or contract between the Agency and the Participants.

Unless otherwise provided for in this Agreement or the Bylaws, all other matters may be undertaken when authorized by a majority vote of the Board present at a meeting where a quorum is present or by a unanimous action in writing.

Majorities may be determined from those Directors present at a meeting or participating by telephone or electronic means.

Section 3. The Board shall take any and all action which may be required under any contract or agreement to which the Agency is bound, including any bond resolution, trust indenture or similar financing agreement; but nothing contained in this Article shall be construed to mean that any Member, Director or Representative is individually liable for any of the obligations of the Agency beyond the amounts for which the Member has contractually obligated itself in other agreements and the Member's Imputed Equity in the Agency, as limited by the liquidation value of Agency non project assets.

Section 4. Unless otherwise restricted herein, the Board may, by standing resolution, delegate certain operating responsibilities and authority, not exceeding the limitations in the current year budget, to an Executive Committee consisting of the elected officers, other members of the Board and agency employees.

Article XI

Annual Budget and Assessments

Section 1. The Board shall prepare an annual budget for each fiscal year. The budget shall include estimated expenditures for the fiscal year less anticipated revenue to be derived from the Agency's services, properties, operations and contracts during each fiscal year not otherwise appropriated to payment or retirement of Agency debt. The estimated expenditures shall include the expenses to be incurred in the operation and administration of the Agency, including the salaries of employees and the payment of compensation for architectural, engineering, legal, fiscal and similar services which include:

- (a) any amounts payable by the Agency or any of its Members under any contract or agreement for the generation, transmission, distribution, purchase, sale or other disposition of energy;

(b) the operation and maintenance costs relating to any real or personal property owned or leased by the Agency or in which it may have an interest for the generation, transmission, distribution, purchase, sale or other disposition of energy;

(c) any other costs, expenses or debts of the Agency incurred for projects or programs which are to be paid from anticipated revenue received from assessments of Members participating in the project or program, whether or not so paid; and

(d) any revenues or credits received and any expenditures by the Agency which are made on behalf of less than all the Members of the Agency or pursuant to an agreement or contract by the Agency with less than all of the Members of the Agency, which expenditures shall be assessed or otherwise recovered pursuant to Agency contracts or agreements with the Members which will benefit from such expenditures;

Section 2. The annual budget shall not include the principal of, redemption premium or interest on bonds or notes of the Agency, which are provided for in other Agency agreements or contracts, including the project agreements or contracts under which the bonds or notes are issued. The Agency shall separately state annual budgets for all projects, which shall include all elements of the projects, including but not limited to all income, costs, expenses and debt service.

Section 3. The annual budget may, but need not, include any and all moneys to be derived by the Agency from any source which is in excess of that required to pay those items set forth in clauses (a) through (d) of Section 1 of this Article.

Section 4. The Board shall establish, consistent with any applicable project agreements or contracts, a set of cost allocation principles to be used in development of the annual budget, including but not limited to allocation of costs into fixed and variable categories, allocation of costs to individual projects and programs and other considerations as may be determined by the Board. Based on these established principles, the Board shall propose an annual budget together with a proposed schedule of assessments, rates, charges, adders and payment dates at the annual meeting or at a meeting the notice for which contains reference to a vote on the annual budget. Upon approval of the annual budget, the net amount of estimated expenditures in excess of the estimated revenues shall be assessed against the Members.

Section 5. Upon the approval of the annual budget by the Board, the amount assessed against each Member shall become an obligation of the Member, enforceable, except as otherwise provided in this Agency Agreement, as a contract right of the Agency. Such assessments shall be paid in accordance with the schedule prepared by the Board and submitted to the Directors for their approval with the annual budget.

Section 6. Any amendment to the annual budget shall be proposed by the Board and approved in the same manner as the adoption of the annual budget.

Section 7. No person or Member shall have any right or cause of action against any Member not promptly paying any part or all of its assessment, but such right or cause of action shall be vested solely in and may be exercised only by the Agency, which may enforce the same as a contract right against the non-paying Member. Before exercising any such right, the Agency shall serve notice of such non-payment upon the Representative of the non-paying Member, which notice shall state the amount of the unpaid assessment and demand payment therefor. If such Member has not paid the deficiency in full within thirty days from the date such notice was served, the Agency may take any enforcement action deemed appropriate by the Board.

Section 8. Any Member which fails to pay its assessments when due, and any Member which breaches any contract or agreement with the Agency, may be expelled from membership in the Agency as provided in Article XIV. Such expelled Member shall continue to be liable: (i) as provided in Article VI for a period of five (5) years from the date of its expulsion, (ii) for its unpaid assessments and for (iii) all obligations under its contracts or agreements with the Agency.

Article XII.

Accounts and Reports

Section 1. General. There shall be strict accountability for all budgets, project or program budgets, funds and reporting of all receipts and disbursements of the Agency, including all programs and projects. The Agency shall establish and maintain such funds and accounts in accord with good accounting practices, Federal Energy Regulatory Commission (FERC) requirements and in accord with any provision of any resolution, indenture or other instrument of the Agency securing its bonds, notes or other indicia of indebtedness, except insofar as such powers, duties and responsibilities are assigned to a trustee appointed pursuant to such resolution, indenture or other instrument. The books and records of the Agency shall be open to inspection at all reasonable times to each Member and its representatives. Any Member may request an independent audit of the books and records of the Agency at the Member's own expense.

The Treasurer shall cause, within 120 days after the close of each fiscal year, an annual independent audit of the accounts and records of the Agency to be made by a certified public accountant or public accountant, all in accordance with law.

All the books, records, accounts and files referred to in this Article XII shall be open to the inspection of holders of bonds or notes of the Agency, or any trustee or other representative thereof, to the extent and in the manner provided in the resolution, indenture or other instrument providing for the issuance of such bonds or notes.

Section 2. Separation of Accounts—projects and programs. The Agency shall establish and maintain a system of accounts for all projects and programs that will ensure no cross-subsidization of costs, risks, or benefits between the various projects and programs and the general accounts of the Agency.

Article XIII.

Withdrawal of Members

Section 1. Any Member may withdraw from the Agency upon the following conditions:

(a) The Member or its Representative shall have filed with the Board of Directors and the Secretary of State or equivalent office for the state in which it is located, certified copies of the resolutions of its governing bodies expressing its intent to withdraw;

(b) Such notice expressing the Member's intent to withdraw from the Agency is provided, in writing, to the Agency not less than five (5) years prior to the effective date of withdrawal, hereinafter, the "Notice Period". Such notice is not effective notice of intent to withdraw from any other agreements or contracts with the Agency. The withdrawing Member must comply with the withdrawal provisions of any other contracts or agreements, if withdrawal is allowed;

However, Section 1(b) notwithstanding, if a Member sells its electric utility system, then in that event the Member may withdraw upon making a lump sum payment to the Agency in an amount that is five (5) times (x) its then annual membership dues and upon delivering an agreement in writing that such withdrawal does not affect its obligations under Articles VI and XIII (other than the five (5) years of notice requirement) nor its need to comply with the withdrawal provisions of any other contracts or agreements, if withdrawal is allowed;

(c) If the Agency, prior to the withdrawal date (which must be not less than five (5) years after the giving of notice of intent to withdraw except as otherwise provided in Section 1(b)) set forth in the withdrawing Member's notice, shall have incurred any obligation payable from assessments in accordance with Article XI which obligation matures upon or after the effective date of such withdrawal, the withdrawing Member shall have paid, or made arrangements satisfactory to the Board to pay, to the Agency, its pro rata portion of such obligation, determined in accordance with Article XI; and

(d) The withdrawing Member fulfills its obligations and liabilities set forth in Article VI; and

(e) If any obligations of the Agency shall be outstanding at the time, such withdrawal will not reduce the number of Members remaining in the Agency to less than three.

Upon the expiration of the Notice Period and upon compliance with the above provisions but subject to the provisions of Section 2 of this Article XIII, the withdrawing City shall no longer be considered a Member of the Agency for any reason or purpose under this Agreement or the Bylaws. The withdrawal of a Member from the Agency shall not affect any obligations under any contract or agreement between the withdrawing Member and the Agency and shall not affect its ongoing obligations set forth in Section 2. Until the expiration of the Notice Period, the withdrawing Member shall continue to have a full voting Representative and Director on the Board, except for a withdrawal upon the sale of a Member's electric utility system under Section 1(b).

Section 2. Member Responsibilities following Withdrawal. If the Agency incurs any additional obligations after the withdrawal date resulting from decisions made by the Board when the withdrawing City was a Member including the Notice Period, then the Agency may assign the withdrawing member an allocated share of such obligations and the withdrawing Member shall be obligated to pay the Agency its share of such obligations as if the Withdrawing Member was still an active Member under this Agreement, as enumerated in Article VI herein.

Section 3. Imputed Equity of Withdrawing Members. A withdrawing Member shall be eligible for distribution of its Imputed Equity in the Agency only under the following conditions:

- (a) The Board declares an equity distribution to all Members that has not been previously paid to the withdrawing Member; and
- (b) The withdrawing Member has fulfilled all of the requirements of Sections 1 and 2 of this Article.

To the extent the withdrawing Member has not fulfilled any and all current or pending obligations or liabilities to the Agency at the time of withdrawal, any equity distributions that would otherwise be payable to the withdrawing Member shall be first set off against any such unfulfilled obligations or liabilities before any remaining equity will be distributed to the withdrawing Member.

Article XIV.

Expulsion of Members

Any Member which has defaulted under a contract or agreement with the Agency or failed to pay its assessments or other obligations or perform its responsibilities in accordance with Article XI hereof may be expelled from the Agency at a regular meeting or a special meeting of the Directors, the notice for which contains reference to a vote on expulsion, by the affirmative vote of a double majority of the Directors (including the Director from the defaulting Member) as defined in Article X, Section 2. The expulsion of a Member from the Agency shall not affect any obligations under any contract or agreement between the expelled Member and the Agency specifically including but not limited to this Agreement or any project or program agreement. However, an Expelled Member shall no longer be represented or have a Director on the Board.

Article XV.

Dissolution

The Agency may be dissolved and this Agreement may be terminated by a vote of the Board pursuant to Article X at a regular meeting or a special meeting, the notice for which contains a reference to a vote on dissolution, but not until after all debts of the Agency have been paid, and only upon the approval of two-thirds of all of the Members as evidenced by resolutions of their governing bodies filed with the Agency. Thereafter, the Board shall liquidate the business of the Agency as expeditiously as possible, distribute the net proceeds to the members in the ratio that the Imputed Equity of each of them bears to the sum of the total Imputed Equity of all of them, and file notice of dissolution, together with the Members' governing body resolutions, with the Secretary of State. However, the disposition of project assets shall be governed by project contracts and agreements.

Article XVI.

Bylaws

The Board shall adopt Bylaws for the conduct of the affairs of the Agency, which Bylaws shall state the powers and duties of the President, Vice President, Secretary and Treasurer. The Bylaws may establish the office of Executive Director and such other offices as are deemed necessary for the conduct of Agency activities. The Board may, by resolution, establish the compensation of such offices.

With the exception of approval of Agency financing for projects or programs (which shall be accomplished pursuant to Article X, Section 2), project or program committees may, at their option, establish voting procedures for their management of the project or program based on one member/one vote, based on pro rata shares of participation in the project or program or other methods the committees deem appropriate.

Article XVII.

Imputed Equity

The net assets of the Agency, exclusive of project or program assets, shall be the property of the Members. Members will accumulate Imputed Equity, exclusive of project or program assets, in the Agency through calculations based on their original contributions upon joining the Agency, if any, adjusted for their pro rata share of the annual changes in net assets of the Agency during their term of membership, appropriately adjusted for transactions or distributions the Board may declare from time-to-time that affect total net assets of the Agency.

Agency Imputed Equity does not include the equity of Utilities Plus, if any, unless formally transferred by Utilities Plus to the Agency as authorized in the Utilities Plus Joint Powers Agreement dated October 1, 1997, or its successor agreements.

Subject to the provisions of any contract or agreement, to the contrary, by which the Agency is bound, Members may receive distributions from the excess revenues of the Agency in the manner prescribed by the Board.

Imputed Equity distributions to Members shall not be made unless the Board, in its sole discretion, declares equity available for distribution. Normally such a declaration will not occur except upon termination of the Agency including the winding up and liquidation of its assets and operations.

Article XVIII.

Other Provisions

Section 1. Meetings. Meetings of the Representatives and of the Board shall be held at the registered office of the Agency, electronically, by telephone or at other places authorized by the Bylaws, upon the call of the Board for the purposes of adopting or revising Bylaws, electing officers, adopting or amending a budget, and transacting any of the business that may come before the meetings. The Bylaws or revisions to Bylaws shall be proposed by the Board and shall become effective when approved by a resolution adopted by the affirmative vote of a double majority of the Directors as defined in Article X, Section 2. The Representatives shall hold an annual meeting at a time and place provided in the Bylaws or in a resolution adopted by the Representatives, at which any business may be transacted. Regular or Special meetings may be held upon such call, notice times and

notice times and places as authorized by the Bylaws or in a resolution adopted by the Directors.

Section 2. Quorum.

(a) A quorum for a meeting of the Representatives is a majority of the total number of Representatives.

(b) A quorum for a meeting of the Directors is a majority of the total number of Directors.

(c) Except where otherwise specifically stated in this Agreement or in the Bylaws, any action which requires the affirmative vote of a percentage of Representatives or Directors shall be construed to be that percentage of Representatives or Directors present and voting at a meeting at which a quorum is present, and not that percentage of all Representatives or Directors.

Section 3. Fiscal Year. Unless otherwise provided in the Bylaws or a resolution adopted by the Board, the fiscal year of the Agency shall commence January 1 and end December 31.

Section 4. Other Agreements. Nothing contained in this Agreement or in the Bylaws shall be construed to prohibit any Member from executing one or more other agency agreements with other cities for the purpose of forming other municipal power agencies under the Act or from otherwise exercising the powers of a municipal power agency as provided in Minnesota Statutes, Section 453.58. Nothing contained in this Agreement or in the Bylaws shall be construed to prohibit the Agency from joining or contracting with an organization or association composed of other municipal power agencies created pursuant to the Act.

Section 5. Amendments.

(a) Proposed amendments to this Agreement may be adopted only at a regular or a special meeting of the Directors the notice for which contains reference to a vote on amendment, which shall be given to each Director, and any such amendment shall become effective only when (1) approved by a double majority of all of the Directors authorized to vote as defined in Article X, Section 2, and (2) ratified by resolutions of a majority of the governing bodies of the Member Cities pursuant to Minnesota Statutes Section 453.53, Subd. 9, and (3) when a certified copy of such amendment is filed with the Secretary of State.

(b) The Bylaws may be amended only by the affirmative vote of a double majority of the Directors as defined in Article X, Section 2, present and voting at an annual meeting or at a special meeting the notice for which contains reference to a vote on amendment of the Bylaws.

IN WITNESS WHEREOF, the Cities have caused this Fourth Restated Agency Agreement to be executed and attested by duly authorized officers, have each caused to be attached hereto the certified resolution of its governing body (as such term is defined in the Act) and the certified resolution of its utility commission (or other body which is charged by law or its charter with the general control of the city's electrical distribution system), and have caused this Agreement to be filed with the Secretary of State of Minnesota requesting therefrom an Amended Certificate of Incorporation, all as of the day and year first above written above.

IN WITNESS WHEREOF, the City of _____ has executed this Fourth Restated Agency Agreement this ____ day of _____, 2010

CITY OF _____, MINNESOTA

By _____
_____, Its Mayor

By _____
_____, Its City Administrator

_____ **UTILITIES COMMISSION**

By _____
_____, Its President

By _____
_____, Its Secretary

Attachment 1
Current Agency Members and Their Representatives
November 10, 2009

| <u>Member</u> | <u>Representative</u> |
|------------------------|------------------------------|
| City of Blue Earth: | Paul Leland |
| City of Delano: | Hal Becker |
| City of Fairfax: | Larry Linsmeier |
| City of Glencoe: | Collin Engebretson |
| City of Granite Falls: | Don Reznecheck |
| City of Janesville: | Clinton Rogers |
| City of Kasson: | Randy Lenth |
| City of Kenyon: | Chris Heineman |
| City of Mountain Lake: | Wendy Meyer |
| City of Sleepy Eye: | Bob Elston |
| City of Springfield: | Scott Johnson |
| City of Windom: | Marv Grunig |

Exhibit 1
Definition of Agency Membership

Section 1. Minimum Requirements. The following characteristics in total and all together are defined as the minimum qualifications of a City for Membership in the Agency:

- (a) Term commitment. A commitment to Membership for a term of five years and subject to the withdrawal provisions of Article XIII;
- (b) Participation in Services. Participation in and support of the following Agency services as they may be defined by the Board of Directors:
 - i. Resource (capacity and energy supply, transmission, renewables and energy conservation) planning services;
 - ii. Capacity and energy scheduling services.

Participation in such services may require the Member to execute applicable contracts with the Agency.

(c) Payment Requirements. Assumption and payment of the City's fully-allocated share of the Agency operating budget including Agency overheads supporting the minimum required Member services provided by the Agency in accordance with subparagraph (b) above, plus assumption and payment of its fully-allocated share of the costs and obligations including Agency overheads of other agreements above and beyond the minimum membership qualifications in subparagraph (b) in which agreements or services the City has elected to participate.

(d) Contribution to Agency Equity. Assumption and payment of the City's fully-allocated share of Member equity in the Agency, as defined by the Board of Directors. Such equity shall include an equivalent share of the net assets and working capital of the Agency as defined in Article XVII, but does not include the City's equity in specific projects or programs in which the City is a participant.

The Agency Members listed on Attachment 1 complied with these membership qualifications as of the date of this Fourth Restatement of this Agency Agreement.

Section 2. Project Participation. A City's participation in an Agency-sponsored resource or transmission project with one or more Agency Members does not by itself make the City an Agency Member. A City that is not a member of the Agency may participate in an Agency-sponsored project if such participation is approved by the Board of Directors.

Section 3. Associate Members. A City that is an Associate Member of the Agency shall not have representation on the Board of Directors nor a right to participate in votes by the Board of Directors.

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