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**HOST FEE AGREEMENT**

**BY AND AMONG**

**THE COUNTY OF CHISAGO, THE TOWN OF LENT,  
INDEPENDENT SCHOOL DISTRICT 138**

**AND**

**SUNRISE RIVER ENERGY, LLC**

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This document drafted by:

## HOST FEE AGREEMENT

This Agreement is entered into by and among the following Parties:

THE COUNTY OF CHISAGO, a body corporate and politic (the “County”); THE TOWN OF LENT, a public corporation (the “Town”), and North Branch Area Public Schools, INDEPENDENT SCHOOL DISTRICT 138 (“ISD 138”);

And

SUNRISE RIVER ENERGY, LLC, a Delaware limited liability company (the “Developer”); together herein collectively referred to as the “Parties.”

### RECITALS

**Whereas**, the County, Town and ISD 138 are interested in fostering economic development, improving the tax base, attracting new businesses and bringing new jobs to the residents of the area; and

**Whereas**, the Developer is interested in constructing and operating an approximately 150–780 megawatt (summer rating) electric generation facility in the Town fueled primarily with natural gas with fuel-oil backup designed to provide electrical capacity, energy, and ancillary services (the “Project”); and

**Whereas**, the Developer will or expects to acquire a parcel of property approximately forty (40) acres in size, legally described as set forth in Exhibit A, which is located east of Interstate 35 and north of Chisago County Road 14 within the County, Town and ISD 138 on which the Project will be located (the “Site”); and

**Whereas**, the Site is located within five miles of two interstate pipelines and within one mile of the Chisago County Substation, which is an electrical transmission substation with alternating current voltages of 115 kV, 345 kV and 500kV; and

**Whereas**, the Developer intends to only run high voltage transmission lines from the Site to the Chisago County Substation and not to otherwise construct high voltage transmission lines off of the Site associated with the Project within Chisago County; and

**Whereas**, pursuant to Minn. Stat. § 272.02, subd. 92, as enacted by the 2009 Minnesota Session Laws, Chapter 88, Article 2, section 9, the Minnesota Legislature has provided a personal property tax exemption which is potentially applicable to the Project; and

**Whereas**, Minn. Stat. § 272.02, subd. 92 requires that at the start of construction the Project must be located in a county with an essential services and transmission services ordinance, which Chisago County does, and have an agreement with the county, township, and school district in which the Project is located for payment in lieu of personal property taxes to the county,

township, and school district for a total not to exceed \$600,000 per year for the operating life of the Project; and

**Whereas**, the Developer has advised the County, Town and ISD 138 that the personal property tax exemption provided by Minn. Stat. § 272.02, subd. 92 is necessary for the economic competitiveness and feasibility of the Project; and

**Whereas**, the Developer acknowledges that in consideration of entering into this Agreement the County, Town and ISD 138 may take certain actions in reliance upon the representation and obligations of Developer including, but not limited to, utilizing the payment in lieu of personal property taxes received herein for the benefit of the citizens of the County, Town and ISD 138; and

**Whereas**, the Developer has also agreed with ISD 138 to make a contribution to ISD 138 of \$100,000 per year for the operating life of the Project to be used as determined by ISD 138.

**NOW, THEREFORE**, the Parties to this Agreement, in consideration of the promises, covenants and agreements made by each to the others do hereby agree as follows:

**1. Payment in Lieu of Personal Property Taxes**

1.1 Payments Required. Consistent with Minn. Stat. § 272.02, subd. 92, the Developer shall, annually and for each year of operation of the Project (“facility” in the statute), make payment to the Chisago County Treasurer in the amount of six hundred thousand dollars and no cents (\$600,000.00). Said payment shall constitute payment in lieu of personal property taxes (“PLPPT”) which thereafter shall be distributed by Chisago County to the County, Town and ISD 138 pursuant to the agreement developed among them and within fifteen (15) days of the County’s receipt of the payment.

1.1.1 Notice and First Payment. The first PLPPT payment shall be made to the Chisago County Treasurer within ninety (90) days after the first combustion turbine electrical generating unit is ready for use in commercial operation as determined by Developer’s acceptance of Developer’s engineering, procurement and construction contractor’s notice of Substantial Completion (“Commercial Operation Date”). Developer shall provide the Parties with at least sixty (60) days written notice of the anticipated Commercial Operation Date and shall provide written notice of the actual Commercial Operation Date within thirty (30) days of that date.

1.1.2 Subsequent Payments. Subsequent PLPPT payments shall continue annually thereafter so long as this Agreement is in effect as provided herein.

1.1.3 Form and Timing of Payment. Payment may be made by check or acceptable electronic transfer and shall be made by the Developer to the County on an annual basis within sixty (60) days of each anniversary of the

Commercial Operation Date regardless of additional notice or invoice by the County.

1.1.4 Payment Reasonable. The Developer agrees and acknowledges that said agreed-upon PLPPT is fair and reasonable and shall not be subsequently reduced, bargained away or credited against; provided however if future legislation repeals the personal property tax exemption for the Project, in whole or in part, the PLPPT due and payable in any year will be reduced by the amount of the personal property taxes due and payable by the Developer for the Project in that year.

1.1.5 Obligation Contingent. The obligation of the Developer to pay the PLPPT shall be contingent upon the fulfillment of all requirements for the Project to receive the personal property tax exemption pursuant to Minn. Stat. § 272.02, subd. 92, including but not limited to a signed development agreement with the County and the Town.

## **2. School Partners Fund Contribution**

2.1 Annual Contribution to School Partners Fund. The Developer shall annually and for each year of operation of the Project make a contribution to ISD 138 in the amount of one hundred thousand dollars and no cents (\$100,000.00) for deposit in a fund to be used by ISD 138 as determined by ISD 138 (“School Partners Fund Contribution”).

2.1.1 First Payment. Developer shall make the first School Partners Fund Contribution payment to ISD 138 at the same time as the Developer makes the first PLPPT payment to the Chisago County Treasurer.

2.1.2 Subsequent Payments. Developer shall make subsequent School Partners Fund Contribution payments to ISD 138 annually thereafter at the same time as the Developer makes subsequent PLPPT payments to the Chisago County Treasurer so long as this Agreement is in effect as provided herein.

2.1.3 Form of Payment. Payment may be made by check or acceptable electronic transfer.

## **3. Miscellaneous Terms**

3.1 Recording the Agreement. The Developer shall be responsible for recording this Agreement with the County Recorder’s office within 30 days of it being executed by all of the parties, shall pay the costs associated with recording hereof, and shall provide the Town and ISD 138 with a copy of the recorded document with recording information stamped thereon within a reasonable time after recording.

3.2 Third Parties. This Agreement does not confer any rights upon any third parties or parties who are not signatories to this Agreement.

- 3.3 Effect of Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors or assigns. Nothing herein shall be deemed to form a partnership, joint venture, or similar entity or activity involving any of the Parties.
- 3.4 Assignment. The Parties hereby consent to any assignment of this Agreement by Developer to any entity that provides financing for the Project, any affiliate of the Developer, or to any new owner of the Project, and the Parties shall take any such further actions as reasonably necessary to effectuate consent. However, no such assignment shall materially alter the Parties' obligations or their successors' obligations to perform under this Agreement. Any such successor or assigns shall assume the responsibilities of the Developer under this Agreement, including, without limit, the obligation to continue to make the PLPPT payments. Notwithstanding the foregoing, Developer may be released from its obligations under this Agreement with the written consent of the County, Town and ISD 138.
- 3.5 Runs with the Land. This Agreement constitutes a covenant running with the land and is enforceable by all legal and equitable remedies including, but not limited to, specific performance.
- 3.6 Modifications. Any changes or alterations to this agreement must be in writing and must be executed by all Parties; provided, however, that changes or alterations to the School Partners Fund Contribution provisions shall only require the signatures of ISD 138 and Developer.
- 3.7 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the Project and the PLPPT paid by Developer, there being no other agreements except the separate agreement by and among the County, Town and ISD 138 as to the split of the PLPPT, the development agreement between the Developer, the County and the Town pursuant to Minn. Stat. § 272.02, subd. 92, and as may be set forth herein.
- 3.8 Term. This Agreement shall be in effect as long as a combustion turbine electric generating unit is located on the Site and the Project is in commercial operation on the Site, or until the earlier termination of this Agreement upon the mutual agreement of the Parties. The Project shall be deemed to be in commercial operation from and after the Commercial Operation Date and through and including the date on which the Developer provides written notice to the Parties of a permanent halt to all current and future generation of electricity on the Site. The project shall continue to be deemed to be in commercial operation notwithstanding: (i) downtime due to installation, repair, maintenance, and replacement of turbines; (ii) periods during which electricity is not being generated due to market, contractual, or other commercial factors; (iii) "mothballing" of the Project for possible future generation of electricity; or (iv) any other circumstances resulting in a temporary, intermittent, or reversible cessation of the generation of electricity.



Developer: Sunrise River Energy, LLC  
c/o LS Power Development, LLC  
Attn: Project Manager  
Two Tower Center,  
11th Floor  
East Brunswick, NJ 08816

With Copy to: Sunrise River Energy, LLC  
c/o LS Power Development LLC  
Attn: General Counsel  
Two Tower Center,  
11th Floor  
East Brunswick, NJ 08816

Or to such other address or party as may be designated in a notice sent as provided herein. A notice given by certified mail shall be deemed given three (3) business days after such notice is deposited in the United States mail, whether or not such notice is actually received.

- 3.12 Notice of Transfer. In the event of the conveyance, sale, or transfer of the Site, Developer shall within ten (10) business days thereof, give notice to the County, Town and ISD 138 of such conveyance, sale or transfer. Such notice shall include the name, address, contact information of the transferee who will be authorized to give and receive notices.
- 3.13 Captions. The captions of the Agreement are for convenience only, and do not affect the interpretation of, and are not to be interpreted as part of this Agreement. This Agreement shall not be construed more strictly against one party than against the other party merely by virtue of the fact that it may have been prepared primarily by counsel for one of the Parties. The Parties acknowledge that they have had the benefit of independent counsel with respect to each of the terms of this Agreement and that the terms were drafted for the mutual benefit of all Parties.
- 3.14 Provisions Severable. The provisions of this Agreement shall be severable so that the unenforceability or invalidity of any provision or provisions of this Agreement shall not render any other provision or provisions unenforceable or invalid. If for any reason this Agreement or any provision hereof, is ruled invalid, in whole or in part, such decision shall not affect the validity of the remaining portions of the Agreement. The Parties or any party claiming by or through them, shall not contest or dispute the validity, legality or enforceability, or assert the invalidity, illegality or unenforceability, of any part of the Agreement.
- 3.15 Time is of Essence. Time is of the essence with respect to each provision of this Agreement.
- 3.16 No Waiver. The failure of the Parties to insist upon the strict and prompt performance of the terms, covenants, or agreements, and conditions contained

herein, or any of the, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant agreement or condition, but the same shall continue in force and effect.

**IN WITNESS WHEREOF**, the Developer, the County, Town and ISD 138, have caused this Agreement to be executed in their names and on their behalf, and which shall be effective as of the last dated signature below.

**[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.]**

**COUNTY OF CHISAGO:**

By: \_\_\_\_\_  
Richard Greene  
Chair of the Board of Commissioners, Chisago County

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
DeAnna Lilienthal, Clerk to the Board

Dated: \_\_\_\_\_

Reviewed: \_\_\_\_\_  
Janet Reiter, Chisago County Attorney

Dated: \_\_\_\_\_

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF CHISAGO    )

The forgoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2010 by \_\_\_\_\_ and \_\_\_\_\_,  
the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the  
**County of Chisago**, a Minnesota County, on behalf thereof.

\_\_\_\_\_  
NOTARY PUBLIC

**TOWN OF LENT:**

By: \_\_\_\_\_  
Gene Olson  
Chair of the Board of Supervisors, Lent Township

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Clerk to the Board

Dated: \_\_\_\_\_

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF CHISAGO    )

The forgoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2010 by \_\_\_\_\_ and \_\_\_\_\_, the  
\_\_\_\_\_ and \_\_\_\_\_, respectively, of the **Town of  
Lent**, a public corporation, on behalf thereof.

\_\_\_\_\_  
NOTARY PUBLIC

**INDEPENDENT SCHOOL DISTRICT 138:**

By: \_\_\_\_\_  
Chair/Superintendant of Independent Sch. Dist. 138

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Clerk to the Board

Dated: \_\_\_\_\_

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF CHISAGO    )

The forgoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2010 by \_\_\_\_\_ and \_\_\_\_\_,  
the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the  
**Independent School District 138**, a Minnesota independent school district, on behalf thereof.

\_\_\_\_\_  
NOTARY PUBLIC



## **EXHIBIT A**

### **Legal Description of the Site**

The West Half of the South Half of the Southeast Quarter of Section 1, Township 34 North, Range 21 West, Chisago County, Minnesota, comprising approximately 40 acres.