

**AGREEMENT FOR LEASE  
SUMMARY PAGE**

**(MAIN STREET POWER COMPANY, INC.)**

This Summary Page, consisting of two pages, is attached to and made a part of that certain Lease Agreement dated July 6, 2010 between the City and County of Denver and the Lessee listed below.

**LESSEE**

Name Main Street Power Company, Inc.  
Address 1245 Pearl Street, Suite 201  
Boulder Colorado  
Attention Edmée Kelsey, Chief Financial Officer

10-2008

**DEMISED PREMISES**

Location Park Avenue Warehouse  
Address 3375 Park Avenue, Denver, Colorado  
Square Footage 11,440

PERMITTED USES Solar installation and operation  
\_\_\_\_\_  
\_\_\_\_\_

HOURS OF OPERATION 365 days a year, weather permitting

**TERM**

Commencement Date \_\_\_\_\_  
Expiration Date \_\_\_\_\_

\_\_\_\_\_  
Lessee

DRAFT FORM OF LEASE/SOLAR

COMPENSATION (Initial)

Monthly Guarantee n/a

Percentage Compensation Fee 0%

PERFORMANCE BOND \$  
(six months of Monthly Guarantees)

REQUIRED MINIMUM INVESTMENT \$ 0.00  
(total dollar amount)

RENOVATION MINIMUM INVESTMENT n/a

RENOVATION COMPLETION DATE n/a

INSURANCE POLICY AMOUNTS

A. Comprehensive General Liability \$1,000,000.00/\$2,000,000.00

B. Automobile/Delivery Vehicle Liability \$1,000,000.00

DESCRIPTION OF EXHIBITS AND ADDENDA

- Exhibit A Premises Site Plans
- Exhibit B Premises Description
- Exhibit C Purchase Option Summary Schedule
- Exhibit D Certificate of Insurance
- Exhibit E Lessee's Proposal
- Exhibit F Prevailing Wage Schedule

\_\_\_\_\_  
Lessee



## **LEASE AGREEMENT**

THIS LEASE AGREEMENT, ("Lease") is made and entered into this 6th day of July, 2010, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("City" or "the City"), and **MAIN STREET POWER COMPANY, INC.** whose address is 1245 Pearl Street, Suite 201, Boulder Colorado 80302, a Delaware corporation authorized to do business in the State of Colorado ("Lessee" or "the Lessee").

WHEREAS, the City, in the exercise of its lawful authority, has constructed, developed and equipped the Premises listed on **Exhibit B** ("Premises"), the location and general configuration of the Premises, with the Demised Premises Plan being shown on **Exhibit A**, attached hereto and made a part hereof;

WHEREAS, upon due consideration the City has determined that in the exercise of its lawful functions, and to serve better the Premises public use, it is desirable and appropriate that an electricity grid-connected photovoltaic, solar power plants with a total generating capacity rated at approximately 99.84 kWp (the "Generating Facility") be developed, constructed, equipped, owned, and operated by the Lessee on the Demised Premises at the Premises and that such use is compatible and appropriate within the uses allowed for the Premises, in order to put the same to full, productive use and for the benefit of the general public;

WHEREAS, the City deems it appropriate and necessary in the public interest to have the Demised Premises operated on its behalf by others, and to have the same operated by Lessee, but under and subject to the continuing jurisdiction, supervision and control of the Department of General Services of the City, under this Lease, all as herein provided; and

WHEREAS, Lessee hereby binds itself subject to the terms and provision of this Lease to pay the City the rentals and payments required herein and to otherwise perform all the terms and conditions of this Lease.

NOW THEREFORE, the City, for the term herein specified, and for and in consideration of the rentals herein stated, and of the terms and conditions herein stated on the part of the Lessee to be kept, observed and performed, has demised and leased, and does by these presents demise and lease to Lessee, and the Lessee has agreed to take and does hereby take from the City, the Demised Premises, as hereinafter improved, all upon and subject to the following express terms, provisions, and conditions:

### **SECTION 1 GENERAL**

#### **1.01 CONSIDERATION**

City enters into this Lease for and in consideration of the payment of compensation by Lessee as herein provided, the construction of all improvements by Lessee as herein provided, the observance by Lessee of the covenants and agreements herein.

**1.02 INCORPORATION OF ATTACHED SUMMARY PAGES, EXHIBITS AND ADDENDA**

The Summary Pages attached to this Lease and the **Exhibits** and Addenda attached to this Lease as described on the Summary Pages shall be deemed incorporated in this Lease.

**SECTION 2  
DEFINITIONS**

**2.01 AUDITOR**

“Auditor” shall mean the City's Auditor and his authorized representative.

**2.02 COMMENCEMENT DATE**

The “Commencement Date” shall mean the date of execution of this Lease.

**2.03 DEMISED PREMISES**

“Demised Premises” shall mean the portion of the Premises as depicted as the cross-hatched area on the Demised Premises Plan attached hereto as **Exhibit A**, located within the Premises site and containing the number of square feet, more or less, as set forth on the Summary Page. “Demised Premises” shall include the plural where applicable. The City and Lessee acknowledge and agree that the dimensions of the Demised Premises as set forth in **Exhibit A** are approximate and that, the precise dimensions and footage shall be determined by the Manager and a revision to the Summary Page and **Exhibit A** will be made, if necessary, depicting the dimensions and footage of the Demised Premises as actually constructed, each of these actions to be taken without the requirements of a formal amendment to this Lease.

**2.04 FACILITY MANAGER**

“Facility Manager” shall mean the Manager of General Services for the City. Facility Manager or his designee shall act as the site manager for the Premises.

**2.05 GENERATING FACILITY**

“Generating Facility” shall have the meaning given in the Recitals.

**2.06 LESSEE’S PROPOSAL**

“Lessee's Proposal” shall mean the proposal attached hereto as Exhibit “E” and accepted by City, and consisting of Lessee's plans for the design and, construction of the Generating Facility.

**2.07 MANAGER**

“Manager” shall mean the City's Manager of General Services.

## **2.08 MANAGER'S AUTHORIZED REPRESENTATIVE**

Whenever reference is made herein to "Manager or his/her authorized representative," or words of similar import are used, the City's Manager shall be such authorized representative, unless notice otherwise is given to the Lessee by the Manager.

## **2.09 PAST DUE INTEREST RATE**

"Past Due Interest Rate" shall mean interest accruing at one percent (1%) per month commencing on the fifth (5<sup>th</sup>) calendar day after the date such amount is due and owing until paid to City.

**2.10 POWER PURCHASE AGREEMENT.** "Power Purchase Agreement" shall mean that certain Solar Power Purchase Agreement of even date herewith, between Lessee as Power Provider, and the City as Purchaser.

## **2.11 PREMISES.**

"Premises" shall mean the City owned location specified and located in Denver, Colorado, including the real property as further described in **Exhibit B** attached hereto. The Demised Premises are located within the Premises.

## **2.12 PURCHASE OPTION.**

"Purchase Option" shall mean the City's option to purchase the Generating Facility which may be exercised as set forth in the Section 6.05.

## **2.13 PURCHASE OPTION PRICE**

"Purchase Option Price" shall mean the price to purchase the Generating Facility as set forth in the Purchase Option Summary.

# **SECTION 3 GRANT OF TENANT RIGHTS**

## **3.01 RIGHTS GRANTED**

City grants to Lessee the right to occupy, improve and use the Demised Premises consistent with and subject to all of the terms and provisions of this Lease.

## **3.02 USE OF DEMISED PREMISES**

Lessee may use the Demised Premises only to construct upon, occupy, own, operate, and use the Generating Facility on the Demised Premises consistent with and subject to all of the terms and provisions of this Lease and the related Power Purchase Agreement and provide related services as set forth on the Summary Page and for no other purposes, unless otherwise authorized in writing by the Manager. It is understood that the use of Demised Premises is restricted by existing zoning code designation of the City, and by all applicable rules, regulations, statutes or ordinances promulgated by any federal, state or municipal agency having jurisdiction over the Demised Premises. Lessee

represents and warrants that it has reviewed the applicable zoning and land use restrictions. As of the Commencement Date, Lessee represents and warrants that it shall comply with applicable zoning and land use restrictions.

Lessee understands and agrees that due to the extended length of the Term of this Lease, the City may determine that it has become necessary for the City to replace the roof or perform other significant construction related maintenance of the Premises, including the Demised Premises. In the event that the City determines to replace the roof or conduct other significant maintenance impacting the Demised Premises, the City shall provide at least one hundred twenty (120) days notice to the Lessee. The Lessee shall cooperate with the City to lessen the impact on the Lessee, including temporary relocation of the Generating Facility to another location within the Premises as may be directed by the City. The City shall permit the Lessee to resume occupation of the Demised Premises in a reasonably timely manner upon completion of the roof replacement or other significant maintenance impacting the Demised Premises, but in no event shall the Generating Facility be out of service for more than forty five (45) consecutive days. In the event that more than forty five (45) consecutive days will pass without operation of the Generating Facility, the Power Provider may, with permission of the Utility, relocate the Generating Facility on the Premises or an alternative site within a "qualifying census tract" that will preserve the new market tax credits (as that term is used in Section 45D of the Internal Revenue Code) and the City shall provide the relocation area on the Premises to allow continued operation of the Generating Facility until such time as the maintenance at the Demised Premises is completed and the Generating Facility restored to its original location at the Demised Premises. No additional rents shall be due for an alternative site. A relocation by the City under this provision shall be permitted no more than once during the Term, except in the event of an emergency. The determination of the need for an emergency repair or maintenance shall at the sole discretion of the Manager of General Services upon reasonable notice to the Lessee. If the Generating Facility is relocated at the request of the City for maintenance under this Section during the Term, the City will be deemed to have exercised the option for extension in paragraph 4 of the Power Purchase Agreement and Lessee shall be required to pay rentals for the extension period.

### **3.03 RIGHTS NOT EXCLUSIVE**

City reserves the right to grant to other lessees the right to operate other photovoltaic, solar power plants in locations within the City other than the Demised Premises, and Lessee understands and agrees that its right to operate a electricity grid-connected photovoltaic, solar power plant within the City is not exclusive. Further, City reserves to itself, its successors and assigns, the right to grant easements and rights of way after the Commencement Date, over and under the Demised Premises for utilities, cell towers, and other uses, so long as such easements and rights of way do not create any interference with the Generating Facility's insolation and access to sunlight, as such access exists as of the Commencement Date of this Lease. Lessee acknowledges and agrees that the Demised Premises will be subject to and burdened by such easements and rights of way. If the area of the Demised Premises is reduced at City's direction from the Lease the rent thereafter shall be reduced in the same proportion as the area deleted bears to the area originally subject to the Lease

### **3.04 NO INTERFERENCE**

Notwithstanding the Generating Facility's presence as Lessee's personal property located on the Demised Premises, City represents to Lessee that City has legal title to the Premises, including the Demised Premises, and that there are no circumstances known to City and no commitments to third parties that may damage, impair, or otherwise adversely affect or interfere with the Generating Facility or its function by blocking the Generating Facility's insolation and access to sunlight; furthermore, City covenants that, except in the exercise of its police and regulatory powers, City shall not cause or permit any such interference with the Generating Facility's insolation and access to sunlight.

### **3.05 MEANS OF ACCESS**

During and after construction all persons accessing the Demised Premises shall be properly trained and shall produce to the Facility Manager a certificate from an Occupational Safety and Health Administration approved class on the process of "Lock-Out and Tag-Out" on file with the Facility Manager, together with a list of technicians and personnel requiring access to the Demised Premises. During Construction all persons requiring access must have certificates of insurance posted on site or provided to the Facility Manager.

During and after construction to the Demised Premises, Lessee, its agents, invitees, guests, employees and suppliers have a non-exclusive right of roof top access and ingress to and egress from the Demised Premises, which shall be coordinated with the Facility Manager. Such access shall be constructed by the Lessee and remain the responsibility of the Lessee, including its maintenance and repair. City may, at the City's expense, at any time close, relocate, reconstruct or modify such means of access, provided that a reasonably convenient and adequate means of ingress and egress is available for the same purposes.

Lessee shall give prior notice to the Facility Manager of the need to access the Premises and shall coordinate all activity at the Demised Premises with the Facility Manager. Lessee's access shall be subject to such reasonable rules as the City may adopt, including but not limited to the Facility Manager or his designee accompanying the Lessee's representative during such access.

### **3.06 RIGHT OF INSPECTION**

City retains the full right of entry in and to the Demised Premises with reasonable prior notice for any purpose necessary, incidental to or in connection with its obligations hereunder, or in the exercise of its governmental functions, or for the purpose of making any inspection or performing testing as set forth in the Power Purchase Agreement at Article 9. In the event of an emergency the City may enter the Demised Premises without giving prior notice, but shall inform the Lessee within a reasonable time after the fact.



## SECTION 4 TERM AND TERMINATION

### 4.01 TERM

“Term” shall mean the period commencing at noon on the date of execution by City of this Lease and expiring at midnight on June 30, 2031 (“Expiration Date”) with five optional annual Renewal Terms commencing at 12:01 a.m. on July 1, 2031 if the City exercises the option for extension in paragraph 4 of the Power Purchase Agreement and ending at midnight on June 30, 2036 with such Renewal Terms being exercised by tender of one year’s payment by Lessee and acceptance of the annual payment by the City. The Term is reflected in the Summary Page with the original term and extensions and renewals thereafter.

### 4.02 TERMINATION WITHOUT CAUSE

The parties recognize that the ability to install a Generating Facility is contingent upon the execution of an Assignment and Assumption Agreement allowing the Lessee to obtain the benefit of the City’s solar rebate from the Utility. In the event that the Utility does not enter into the Assignment and Assumption Agreement or is legally prevented from entering into the Assignment and Assumption Agreement, this Lease and the Power Purchase Agreement shall terminate and the parties are fully released from any obligations hereunder, except that the Lessee shall remove the Generating Facility and restore the property to its former condition within ninety (90) days of the determination that the Utility will not execute the Assignment and Assumption Agreement.

In the event the City determines it is in the best interest of the City to sell the Premises, the City may condition the sale upon acceptance by the buyer of an assignment of this Lease and the corresponding Power Purchase Agreement.

After June 30, 2031, the City has the right to terminate without cause upon twenty (20) days prior written notice to the Lessee.

In the event the City terminates or defaults under the Power Purchase Agreement, the Lessee shall have the right to terminate this Lease upon twenty (20) days written notice to City. After June 30, 2031, the Lessee has the right to terminate without cause upon twenty (20) days prior written notice to the City

**4.03 TERMINATION FOR CAUSE** Either Party may terminate the Lease if the other Party or any of such Party’s officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with such Party’s business. Termination for the reasons stated in this Section 4.04 is effective upon receipt of notice.

In the event of a default under the terms of the Lease or under the terms of the corresponding Power Purchase Agreement, Either Party has the right to terminate the Agreement with cause upon written notice effective immediately.

#### **4.04 SURRENDER OF DEMISED PREMISES**

Upon the Expiration Date or earlier termination of this Lease or on the date specified in any demand for possession by City after any Event of Default by Lessee, Lessee covenants and agrees to surrender possession of the Demised Premises and, if all or any portion of the Generating Facility is removed as requested by City, Lessee shall, at Lessee's expense, restore to the conditions existing prior to the installation of such improvements or applicable portions thereof, and upon failure to do so, City may cause such removal and restoration to be done at Lessee's expense. Lessee shall remove its equipment, unless the City has elected to purchase the Generating Facility and rights of associated S-RECs in accordance with Section 6.05 of this Lease. If Lessee fails to remove the Generating Facility within one hundred twenty (120) days by the expiration or termination of this Lease, City may, at its option, keep and retain any such Generating Facility or dispose of the same and retain any proceeds therefrom, and City shall be entitled to recover from Lessee any costs of City in removing the same and in restoring the Demised Premises subject to ordinary wear and tear, in excess of the actual proceeds, if any, received by City from disposition thereof.

#### **4.05 HOLDING OVER**

If Lessee holds over after Expiration Date of the Term or any extension thereof, thereafter Lessee's occupancy shall be deemed a month-to-month tenancy at an annual rental equal to 150% of the annual compensation provided in Section 5 herein. Lessee shall be subject to all other terms and conditions of this Lease not specifically modified above. Nothing herein shall be construed to give Lessee the right to hold over, and City may exercise any remedy at law or in equity to recover possession of the Demised Premises, as well as any damages incurred by City.

### **SECTION 5 COMPENSATION**

#### **5.01 COMPENSATION**

Lessee covenants and agrees, without offset, deduction or abatement, to pay City as compensation for the rights and privileges granted by City, a rental of One Hundred Dollars (\$100.00) per year payable in advance, without further invoice, to the Manager of Finance, City and County of Denver. Each annual payment shall be delivered to the Manager at 201 West Colfax, Dept. 1110, Denver, Colorado 80202, or to such other address as the City may designate. Payments shall be due on August 1, of each year beginning with August 1, 2010 and continuing through August 1, 2030. Payment for multiple years may be made in advance by the Lessee, however, the City shall not be liable for return of any prepayment in the event of a termination of this Lease Agreement.

Lessee shall provide all energy produced by the Generating Facility to the City for use at the Demised Premises.

Lessee shall also grant to the City an option to purchase the Generating Facility and the solar renewable energy credits resulting from ownership as set forth in Section 6 of this Lease.

The obligation to pay such compensation shall commence upon the Commencement Date set forth herein and continue through the Term hereof.

**5.02 INTEREST ON PAST DUE AMOUNTS**

Any payments not made to City when due shall accrue interest at the Past Due Interest Rate, as herein defined.

**5.03 PLACE AND MANNER OF PAYMENTS**

All sums payable to City hereunder shall be made payable to "Manager of Finance" without notice at the following:

Manager of Finance  
201 West Colfax Dept 1010  
Denver, Colorado 80202

or at such other place as the Manager or his authorized representative may hereafter designate by notice in writing to Lessee. All sums shall be made in legal tender of the United States. Any check given to the City shall be received by it subject to collection, and Lessee agrees to pay any charges, fees or costs incurred by the City for such collection, including reasonable attorneys' fees.

**5.04 BOOKS OF ACCOUNT AND AUDITING**

Lessee shall make available upon request within the Denver metropolitan area true and complete records and accounts of all revenues and business transacted. Lessee agrees to establish and maintain a system of bookkeeping satisfactory to City's Auditor and in accordance with generally accepted accounting principles. Lessee shall keep and preserve for at least three (3) years, or until sooner audited by City, all evidence of revenues and business transacted for such period. The City's Auditor and Manager and their respective authorized representatives shall have the right, upon reasonable prior notice, to inspect or audit at any time all of the books of account, bank statements, documents, records, returns, papers and files of Lessee relating to the gross revenues and business transacted, whether stored in electronic media or hard copy.

Lessee, upon request, shall make all such documents available for examination within the Denver metropolitan area. Such documents shall be available to the City representative within fourteen (14) calendar days of the date of the written request.

The City's right to perform such an audit shall expire three (3) years after the Expiration Date, or earlier termination of this Lease, whichever is earlier.

Lessee expressly agrees that the City's Manager and Auditor and their authorized representatives may inspect any sales tax return or report and accompanying schedules and data which Lessee may file with the City pursuant to the City's Retail Sales Tax Article, and any reporting and Environmental Attributes and Environmental Incentive data, as defined in the Power Purchase Agreement, which Lessee may file with the Public Service Co. of Colorado, and waives any claim of confidentiality which it may have in connection therewith.

## **SECTION 6 CONSTRUCTION OF GENERATING FACILITY**

### **6.01 FACILITY TO BE CONSTRUCTED**

Lessee, at its cost shall cause its subcontractors to prepare plans and specifications for the Generating Facility to be constructed hereunder. The plans and specifications shall be subject to the Manager's approval, which approval shall not be unreasonably withheld. Such plans shall be generally in accordance with Lessee's Proposal, as attached at **Exhibit E**. Any changes to Lessee's Proposal must be approved by the Manager in the Manager's sole discretion, though such approval not to be unreasonably withheld. Lessee agrees to have construction of all of the Generating Facility completed no later than 150 days after the effective date of this Lease.

The Manager in his/her sole discretion may extend the construction deadlines set forth above without the need for City Council approval, however, in any event, the Manager may not extend the date for completion of construction beyond June 30, 2011.

The Manager shall approve the final design of the Generating Facility and shall jointly approve any changes in the concept or design of the Generating Facility.

### **6.03 GENERATING FACILITY**

The Generating Facility shall contain a maximum of 11,440 square feet, and a capacity of approximately 99.84kWp. The Manager may approve changes in the location of the Generating Facility, as long as the size of the site does not increase the area of the Demised Premises.

### **6.04 TITLE TO IMPROVEMENTS**

Lessee agrees that all tenant finish installed by the City to the Demised Premises, including approved changes and renovations, which are affixed to the realty, are the property of the City upon their completion and acceptance by City. Lessee shall sign any documents reasonably requested by City which show the ownership in the City. The City agrees that the Generating Facility is the property of the Lessee. The City shall sign any documents reasonably requested by Lessee which show the ownership of the Generating Facility in the Lessee.

**6.05 OPTION FOR PURCHASE OF GENERATING FACILITY.** In consideration of the amounts paid under this Lease and the applicable Power Purchase Agreement and so long as (i) City has not caused an event of default under the applicable Power Purchase Agreement; (ii) each of this Lease and the applicable Power Purchase Agreement between the Parties with respect to the Premises remain effective, and (iii) City remains in full compliance with the terms of this Lease and the Power Purchase Agreement, City is granted the right and option to purchase

the Generating Facility from Power Provider, including all rights and privileges held by the Lessee. This option may only be exercised upon the date which is the seventh (7<sup>th</sup>) anniversary of the Commercial Operation Date (as defined in the Power Purchase Agreement,) and subsequently every two (2) years thereafter. If the City elects to purchase the Generating Facility prior to the Expiration Date, the City shall pay to the Lessee the greater of the then Fair Market Value of the Generating Facility, as determined in connection with Section 6.05 (b) or Purchase Option Price set forth in the Purchase Option Summary Schedule attached to this Lease as **Exhibit C**. If the City elects to exercise the Purchase Option at the Expiration Date, the purchase price shall be the then Fair Market Value. Not less than ninety (90) days prior to the projected date for exercise of the Purchase Option, the City shall provide written notice to Lessee of the City's desire to determine the Fair Market Value of the Generating Facility. The City shall not elect to exercise its Purchase Option until after a Fair Market Value has been determined. Upon the exercise of the foregoing Purchase Option plus receipt of the Fair Market Value or Purchase Option Price, as applicable, and all other amounts then owing by the City to Lessee, the Parties will execute all documents necessary to cause title to the Generating Facility to pass to the City as-is, where-is; provided, however, that Lessee shall remove any encumbrances placed on the Generating Facility by the Lessee.

The "Fair Market Value" of the Generating Facility shall be the value determined by the mutual agreement of the City and Lessee within thirty (30) days of the City's notice of desire to determine the Fair Market Value pursuant to this Section 6.05. If the City and Lessee cannot mutually agree to a Fair Market Value, then the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The greater of the Purchase Option Price or the Fair Market Value valuation made by the appraiser shall be the price at which the City may, in its sole discretion, determine to exercise its Purchase Option. The costs of the appraisal shall, subject to the City's appropriation be borne by the Parties equally. To the extent transferable, the remaining period, if any, on all warranties for the Generating Facility shall be transferred from Lessee to the City at no cost to the City. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be selected by the two (2) appraiser firms proposed by each Party. Upon any such purchase of the Generating Facility by the City, Lessee shall convey all its title, ownership rights, and any other interests Lessee holds in the Generating Facility and the renewable energy certificates and other revenues related to the Generating Facility. Such purchase and assignment shall be conditioned upon the consent of Public Service Co. of Colorado to the transfer and assignment of the agreements between the Lessee and Public Service Co. of Colorado.

#### **6.06 DESIGN, DEVELOPMENT AND CONSTRUCTION OF IMPROVEMENTS/RESTRICTION ON CHANGES**

The Generating Facility development must consider the historical values in its design and operation.

Site development shall conform to all applicable local, state and federal requirements. This includes, but is not limited to, State and United States Environmental Protection Agency ("EPA")

water and air quality requirements, storm drainage management plans by the Urban Drainage and Flood Control District (UDFCD) and related agencies to the Premises site.

Lessee shall provide a notice of construction start date at least fifteen (15) days prior to beginning construction and shall cooperate with the City and its planners, designers, architects, and engineers in the construction and installation of the Generating Facility and site improvements on the Premises and shall comply with the approved plans and specifications of applicable laws, including the City's Building Code.

Coordination with the Facility Manager will be the sole responsibility of the Lessee. Lessee shall be responsible for obtaining all site development and building permits.

Lessee shall be responsible for all utilities needed during construction.

All construction work, materials, and installations involved in or incidental to the construction on the Premises shall be subject at all times to inspection and approval by the City. The City shall at all times have the right of access to the Premises, including the Demised Premises to monitor and inspect the construction of the Generating Facility to assure that the Generating Facility is constructed and installed in compliance with the approved plans and specifications.

The City shall have the right to halt construction or deny access to the Premises, including the Demised Premises, at any time if such construction is at material variance from the approved plans and specifications until such material variance is corrected, or if such construction poses an immediate safety hazard at the Premises, including the Demised Premises, until such safety hazard is eliminated; provided that the City shall not terminate the Lease hereunder to the extent the Lessee is continuing to cure variance or hazard and to proceed with construction of the Generating Facility.. The City shall provide notice of any restricted access to the Demised Premises and shall cooperate and use its best efforts to alleviate and resolve any such material variance or impediment to the safe operation of all of the Premises so as to permit continuation of construction as expeditiously as possible.

Thereafter, Lessee agrees not to alter, add to, remove, or demolish any of the improvements on the Demised Premises without the prior written approval of the Manager which consent shall not be unreasonably withheld.

**6.07 AS-BUILT DRAWINGS.** Not later than sixty (60) days after completion of all work for the Generating Facility, Lessee shall provide the City complete sets of as-built drawings prepared. If Lessee fails to provide the as-built drawings after written notice from the City, the City may terminate the Lease. Lessee agrees that, upon the request of the City, Lessee will inspect the Demised Premises jointly with the City to verify the as-built drawings. All material improvements made by Lessee shall be subject to inspection by the City and approval by Manager within fourteen (14) calendar days of request for approval, and shall be removed and replaced at Lessee's sole cost immediately if disapproved.

**6.08 CONSTRUCTION BONDS.** Prior to the commencement of construction, Lessee shall deliver to the Manager a payment and performance bond, or alternate form of surety, letter of credit or alternate form of assurance, in a sum not less than One Hundred Percent (100%) of construction contract price payable to Lessee's contractor. Said bond shall guarantee prompt and faithful payment by the Lessee directly to Lessee's contractors and by Lessee's contractors to all persons supplying labor, materials, team hire, sustenance, provisions, provender, supplies, rental machinery, tools and equipment used directly or indirectly by the said contractor, subcontractor(s) and suppliers in the prosecution of the work provided for in said construction contract and shall protect the City from any liability, losses or damages arising therefrom.

All bonds shall be issued by a surety company licensed to transact business in the State of Colorado and satisfactory to and approved by the City

**6.09 LIMITATION ON LIABILITY.** Lessee agrees that no liability shall attach to the City for any damages or losses incurred or claimed by Lessee or any other person or party on account of the construction or installation of the Generating Facility or other improvements to or upon the Demised Premises made by Lessee. Lessee agrees that no liability shall attach to the City for any interference or delay caused by construction in adjacent areas or the Premises operations, including without limitation damages or losses in the nature of delay damages, lost labor productivity, and impact damages. The City agrees that no liability shall attach to Lessee as a result of any City-caused interference or delay.

## **SECTION 7 OPERATION AND USE OF DEMISED PREMISES**

### **7.01 OPERATIONS**

Lessee agrees to conduct its business to accommodate the public using the Premises and to operate the Generating Facility in the following manner:

- A. Lessee shall operate the Generating Facility in accordance with prudent industry standards.
- B. Lessee shall at all times retain an experienced manager of high quality to manage the Generating Facility who is fully authorized to represent and act for it in the operation of the Generating Facility and to accept service of all notices provided for herein. At times when this manager is not present at the Generating Facility, Lessee shall assign, or cause to be assigned, a qualified subordinate to be in charge of the Demised Premises, services and Facility and to be available at the Demised Premises to act for such manager.
- C. Lessee shall provide Facility Manager with prior written notice of Lessee's personnel that will be at the Premises to perform any operation or maintenance on the Generating Facility, and such Lessee personnel shall be clearly identified as such.
- D. Lessee shall comply with all applicable federal, state and local laws and regulations, including without limitation those governing operation of energy utilities. Lessee shall allow duly authorized representatives of governmental entities access to the Demised Premises for inspection purposes.



Lessee agrees to obtain at its own expense, and maintain at all times, all licenses and certificates necessary for the operation of the Generating Facility and to comply with all applicable health, safety and sanitary laws, regulations and inspections concerning same.

E. Lessee shall develop detailed written operating and security procedures and the Facility Manager shall have twenty-one (21) days to review such procedures.

F. Lessee shall comply with all Internal Revenue Service regulations.

G. The Manager or his/her authorized representative shall have the right to make reasonable objections to the character of the service rendered, energy produced, and the appearance and condition of the Demised Premises. Lessee agrees to promptly discontinue or remedy any objectionable practice or condition within five (5) days after written notice by the Manager or his/her authorized representative.

#### **7.02 HOURS OF OPERATION**

Lessee agrees to keep the Generating Facility open year round during daylight hours, extenuating circumstances such as weather excepted.

#### **7.03 CARE OF AREA**

Lessee agrees that it will keep the Demised Premises in a neat, clean, safe, sanitary and orderly condition at all times, and further agrees that it will keep such area free at all times of all paper, rubbish, spills, and debris. Lessee, at its own expense, shall collect and deposit all trash and refuse.

#### **7.04 COMPLIANCE WITH ALL LAWS AND REGULATIONS**

Lessee agrees not to use or permit the Demised Premises to be used for any purpose prohibited by the laws of the United States or the State of Colorado or the ordinances or Charter of the City and County of Denver, or not authorized hereunder, and it further agrees that it will use the Demised Premises in accordance with all applicable federal, state and local laws and all general rules and regulations adopted by the City or the Manager for the management, operation and control of the Premises, either promulgated by the City on its own initiative or in compliance with regulations or other authorized federal agency. Lessee further agrees to submit any report or reports or information which the City is required by law or regulation to obtain from Lessee or which the Manager may request relating to Lessee's operations. Without limiting the foregoing, Lessee shall comply at all times with the Americans with Disabilities Act, 42 USC 12,000 et seq., and all applicable regulations adopted pursuant thereto, in the physical conditions in the Demised Premises and in Lessee's operations.

#### **7.05 PREVAILING WAGE; SMALL BUSINESS ENTERPRISES**

Lessee, where applicable, shall comply with Section 20-76 of the Denver Revised Municipal Code on prevailing wages and Sections 28-201, et. seq., of the Denver Revised Municipal Code on small business enterprises. . By executing this Agreement, the Lessee covenants that it is familiar with Code Section 20-76 and is prepared to pay or cause to be paid prevailing wages, if any, required by the scope of work of the Lessee's or his subcontractor's employees. A schedule of prevailing wage



is attached as **Exhibit F**. The schedule of prevailing wage is periodically updated and Lessee is responsible for payment of then current prevailing wage. **Exhibit F** shall be deemed replaced by updated schedules with out amendment to this Agreement. The Lessee may obtain an updated scheduled of prevailing wage at any time from the Auditor's Office.

#### **7.06 COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS**

Lessee, in conducting any activity on the Demised Premises, shall comply with all applicable local, state or federal environmental rules, regulations, statutes, laws or orders (collectively "Environmental Requirements"), including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous Materials or special wastes and regarding releases or threatened releases of Hazardous Materials or special wastes to the environment. For purposes of this Lease the term "Hazardous Materials" shall refer to those materials, including without limitation asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), oil or any other petroleum products, natural gas, source material, pesticides, and any hazardous waste, toxic substance or related material, including any substance defined or treated as a "hazardous substance," "hazardous waste" or "toxic substance" (or comparable term) in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 et seq. (1990)), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq. (1990)), and any rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute. Lessee shall comply with the City's Ordinance 196, as amended on March 18, 1991 (amendments to the City Uniform Public Code related to water conservation fixtures).

Lessee shall acquire all necessary federal, state and local environmental permits and comply with all applicable federal and state environmental permit requirements.

Lessee agrees to ensure that the Generating Facility at the Demised Premises is designed, constructed, operated and maintained in a manner that minimizes environmental impact through appropriate preventive measures and complies with all federal, state and local environmental requirements. Lessee agrees to evaluate methods to reduce the generation and disposal of waste materials as applicable. Wastewater from maintenance or operational activities shall be pretreated with sand and grease traps as applicable.

In the case of a release, spill or leak as a result of Lessee's construction, operation or maintenance activities, Lessee shall immediately control and remediate the contaminated media to applicable federal, state and local standards. Lessee shall reimburse the City for any penalties and all cost and expense, including without limitation attorney's fees, incurred by the City as a result of the release or disposal by Lessee of any pollutant or hazardous material on the Premises.

#### **7.07 WASTE OR IMPAIRMENT OF VALUE**

Lessee agrees that nothing shall be done or kept in the Demised Premises which might impair the value of the Premises or which would constitute waste thereon.

#### **7.08 HAZARDOUS USE**

Lessee agrees that nothing shall be done or kept in the Demised Premises and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Demised Premises which

might be unsafe or hazardous to any person or property. Further, Lessee shall not do or permit to be done any act or thing upon the Demised Premises which will invalidate, suspend or increase the rate of any fire insurance policy required under this Lease, or carried by the City, covering the Demised Premises or the buildings in which the Demised Premises is located or which, in the opinion of the Manager or his authorized representative, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Lease. If, by reason of any failure by Lessee to comply with the provisions of this section, after receipt of notice in writing from the City, any fire insurance rate on the Demised Premises or on the buildings in which the same is located, shall at any time be higher than it normally would be, then Lessee shall pay the City, on demand, that part of all fire insurance premiums paid by the City which have been charged because of such violation or failure of Lessee; provided, that nothing herein shall preclude Lessee from bringing, keeping or using on or about the Demised Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on the normal operations contemplated herein

#### **7.09 STRUCTURAL, ELECTRICAL OR SYSTEM OVERLOADING**

Lessee shall operate the Generating Facility and appurtenant utilities in a manner that will not create a hazard by overloading the capacity of any structural, roof load, snow load, wind tolerances, antenna interference, electrical or other system facility.

#### **7.10 NOISE, ODORS, VIBRATIONS AND ANNOYANCES**

Lessee shall conduct its operations in an orderly and proper manner so as not to commit any nuisance in the Demised Premises or unreasonably annoy, disturb or be offensive to the public and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate any unusual, nauseous or objectionable noise, gases, vapors, odors and vibrations and to maintain the lowest possible sound level in its operations.

**7.11 ACCESSIBILITY.** Lessee shall not do or permit to be done anything which might interfere with or hinder police, firefighting, or other emergency personnel in the discharge of their duties.

### **SECTION 8 UTILITIES AND SERVICES**

#### **8.01 UTILITIES AND SERVICES**

Lessee shall be responsible for utilities used by Lessee during construction of the Generating Facility including all repair and janitorial services, related to construction of the Generating Facility.

#### **8.02 STORAGE**

Lessee shall be responsible for providing its own storage, whether on-site or off-site, during and after construction within the Demised Premises. In the event that Lessee requires temporary on-site storage, that storage shall be coordinated with the Facility Manager.

### **8.03 MAINTENANCE**

Lessee shall, at its expense maintain the Demised Premises in accordance with prudent industry standards including redecoration, painting and repair and replacement of worn furnishings in relation to the Demised Premises and the Generating Facility as the conditions and the Manager or his/her authorized representative may reasonably require. The cost of maintenance, care and any necessary replacement of the Generating Facility shall be borne by Lessee. Lessee agrees, at its expense and without cost or expense to the City, during the Term hereof that:

A. Lessee shall keep the Generating Facility in good order and condition and will make all necessary and appropriate repairs and replacements in accordance with industry standards and in a good and workmanlike fashion without diminishing the original quality of such improvements;

B. Lessee shall not permit rubbish, debris, waste materials or anything unsightly or detrimental to health, or likely to create a fire hazard, or conducive to deterioration, to remain on any part of the Premises or to be disposed of improperly.

C. Lessee shall provide and maintain obstruction lights and all similar equipment or devices now or at any time required by any applicable law, ordinance or municipal, state or federal regulation.

D. Lessee shall be responsible for the removal of snow and ice on the Demised Premises to the extent Lessee or the City need to access the Generating Facility.

E. The Manager or his authorized representative shall have the right to make reasonable objections regarding the maintenance and appearance of the Premises. Lessee agrees to promptly discontinue or remedy any reasonably objectionable condition within five (5) days after written notice by the Manager or his authorized representative.

### **8.04 INTERRUPTION OF SERVICES**

The Parties agree that neither Party shall be liable for City's failure to supply any utility services. City reserves the right to temporarily discontinue utility services at such time as may be necessary by reason of accident, unavailability of employees, repairs, alterations or improvements or whenever by reason of strikes, lockouts, riots, acts of God or any other happenings beyond the control of the City, the City is unable to furnish such utility services. The City shall not be liable for damages to persons or property for any such discontinuance, nor shall such discontinuance in any way be construed as cause for abatement of compensation or operate to release the Lessee from any of its obligations hereunder, except as otherwise provided in the Section 11 entitled "Damage, Destruction or Loss."

## **SECTION 9 INDEMNITY, INSURANCE AND BONDS**

### **9.01 DEFENSE AND INDEMNIFICATION:**

A. Lessee hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Lease ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Lessee or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

B. Lessee's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether claimant has filed suit on the Claim. Lessee's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

C. Lessee will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

D. Insurance coverage requirements specified in this Lease shall in no way lessen or limit the liability of the Lessee under the terms of this indemnification obligation. The Lessee shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Lease.

## 9.02 INSURANCE

A. Full Term of Agreement. Lessee further agrees to secure at its own expense, and to keep in force at all times during the Term hereof, the following insurance:

1. **General Conditions:** The Lessee shall secure, at or before the time of execution of this Lease, the following insurance covering all operations, goods or services provided pursuant to this Lease. Lessee shall keep the required insurance coverage in force at all times during the term of this Lease, or any extension thereof, during any warranty period, and for three (3) years after termination of this Lease. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as "A"VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to the Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." Additionally, Lessee shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the

City must be notified by the Lessee. Lessee shall be responsible for the payment of any deductible or self-insured retention. The City reserves the right to require the Lessee to provide a bond, at no cost to the City, in the amount of the deductible or self-insured retention to guarantee payment of claims. The insurance coverages specified in this Lease are the minimum requirements, and these requirements do not lessen or limit the liability of the Lessee. The Lessee shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Lease.

2. **Proof of Insurance:** Lessee shall provide a copy of this Lease to its insurance agent or broker. Lessee may not commence occupancy under this Lease prior to placement of coverage. Lessee certifies that the certificate of insurance attached as **Exhibit D** preferably an ACORD certificate, complies with all insurance requirements of this Lease. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Lease shall not act as a waiver of Lessee's breach of this Lease or of any of the City's rights or remedies under this Lease.. The City's Risk Management Office reserves the right to require the Lessee to provide a certificate of insurance, a policy, or other proof of insurance including, but not limited to, policies and endorsements.

3. **Additional Insureds:** For Commercial General Liability, and Auto Liability, Lessee's insurer shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as an additional insured.

4. **Waiver of Subrogation:** For all coverages, Lessee's insurer shall waive subrogation rights against the City.

5. **Sub-consultants:** All sub-consultants and subcontractors (including independent contractors, suppliers or other entities providing goods or services required by this Lease) shall be subject to all of the insurance coverages herein and shall procure and maintain the same coverages required of the Lessee. Lessee shall include all such sub-consultants, subcontractors, independent contractors, suppliers or other entities as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that these entities maintain the required coverages. Lessee agrees to provide proof of insurance for all such subcontractors and sub-consultants upon request by the City.

6. **Workers' Compensation/Employer's Liability Insurance:** Lessee shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Lessee expressly represents to the City, as a material representation upon which the City is relying in entering into this Lease, that none of the Lessee's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Lease, and that any such rejections previously effected, have been revoked as of the date Lessee executes this Lease.

7. **General Liability:** Lessee shall maintain limits of \$1,000,000 for each occurrence claim, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. Aggregate limits must be "per project" or "per location;"

8. **Business Automobile Liability:** Lessee shall maintain Business Automobile Liability with limits of \$1,000,000 for combined single limit applicable to all owned, hired, and non-owned vehicles used in performing services under this Lease.

9. **Builder's Risk Insurance:** Power Provider shall maintain or require EPC Provider to maintain Builder's Risk \_policy limits equal to the initial contract amount plus additional coverage equal to contract amount for all subsequent change orders.

10. **Excess/Umbrella Liability:** Lessee shall maintain limits of \$5,000,000.

11. **Additional Provisions:**

(a) For all Commercial General Liability, excess/umbrella liability, the policies must provide the following:

- (i) That this Lease is an Insured Contract under the policy;
- (ii) Defense costs in excess of policy limits;
- (iii) A severability of interests, separation of insureds, or cross liability provision;
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance provided by the City.

(b) For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

(c) Lessee shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Lessee shall procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force

B. **Construction Period.** Lessee agrees to secure or require each contractor to secure and to keep in full force and effect during and until completion of the Generating Facility the following insurance:

1. The Lessee shall obtain and keep in force during the construction period pursuant to this Lease, insurance policies as described in the Section 9.02 (Insurance).

2. The City's acceptance of any submitted insurance certificate is subject to the approval of the City's Risk Management Administrator. All coverage requirements specified in Section 9.02 (Insurance) shall be enforced unless waived or otherwise modified in writing by the City's Risk Management Administrator.

3. Unless specifically excepted in writing by the City's Risk Management Administrator, the Lessee shall include all sub-consultants performing services hereunder as insureds under each required policy or shall furnish a separate certificate (on the form certificate provided), with authorization letter(s) and receipt(s) of premium payment for each sub-consultant. All coverages for sub-consultants shall be subject to all of the requirements herein.

4. Lessee understands and agrees that the City, its officers, officials and employees, are relying on and do not waive or intend to waive by any provisions of this Lease the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 to 120, C.R.S., or otherwise available to the City, its officers, officials and employees.

### **9.03 NO PERSONAL LIABILITY**

No director, officer or employee of either Party hereto shall be held personally liable under this Lease or because of its execution or attempted execution.

### **9.04 TAXES, LICENSES, LIENS AND FEES**

Lessee agrees to promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operations hereunder and to take out and keep current all municipal, state or federal licenses required for the conduct of its business at and upon the Demised Premises and further agrees not to permit any of said taxes, excises, license fees or permit fees to become delinquent. Lessee also agrees not to permit any mechanic's or materialman's or any other lien to become attached or be foreclosed upon the Demised Premises or improvements thereto, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman. Lessee agrees to furnish to the Manager, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by it of Social Security, unemployment insurance and worker's compensation insurance, and all required licenses and all taxes. Lessee further agrees to promptly pay when due all bills, debts and obligations incurred by it in connection with its operations hereunder and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against the Demised Premises or improvements thereon which will in any way impair the rights of the City under this Lease.

## **SECTION 10 DEFAULT AND REMEDIES**

### **10.01 DEFAULT**

Lessee shall be in default under this Lease if Lessee:

- A. Fails to timely pay when due to City the compensation or any other payment required hereunder; or
- B. Is in default under the associated Power Purchase Agreement with the City for Demised Premises at the Premises; or
- C. Becomes insolvent, or takes the benefit of any present or future insolvency or bankruptcy statute, or makes a general assignment for the benefit of creditors, or consents to the appointment of a receiver, trustee or liquidator of any or substantially all of its property; or



D. Transfers its interest under this Lease, except as otherwise permitted herein, without the prior written approval of the City, by reason of death, operation of law, assignment, sublease or otherwise, to any other person, entity or corporation; or

E. Fails to complete construction of all of the Generating Facility no later than June 30, 2011, or fails to make sufficient progress on construction of the Generating Facility where it becomes apparent that the construction deadline will not be met, unless such date is extended by the Manager in his/her discretion.

F. Abandons, deserts or vacates the Demised Premises, or fails to operate the Generating Facility; or

G. Suffers any lien or attachment to be filed against the Demised Premises, the Premises or City's property because of any act or omission of Lessee, and such lien or attachment is not discharged or contested by Lessee in good faith by proper legal proceedings within twenty (20) days after receipt of notice thereof by Lessee, provided, however, that liens and encumbrances on the assets of Lessee and Lessee's affiliates in favor of lenders of Lessee and Lessee's affiliates, including liens and encumbrances against the Generating Facility, shall not be deemed a Default hereunder and are expressly permitted by the City as provided in this Lease; or

H. Fails to keep, perform and observe any other promise, covenant or agreement set forth in this Lease and such failure continues for a period of more than thirty (30) days after delivery by Manager of a written notice of such breach or default, except where a shorter period is specified herein, or where fulfillment of its obligation requires activity over a period of time and Lessee within ten (10) days of notice commences in good faith to perform whatever may be required to correct its failure to perform and continues such performance without interruption except for causes beyond its control; or

I. Gives its permission to any person to use for any illegal purpose any portion of the Premises made available to Lessee for its use under this Lease.

## **10.02 REMEDIES**

If Lessee is in default under Section 10.01, the City may exercise any one or more of the following remedies:

A. The City may elect to allow this Lease to continue in full force and effect and to enforce all of City's rights and remedies hereunder, including without limitation the right to collect compensation as it becomes due together with interest accrued at the Past Due Interest Rate; or

B. The City may cancel and terminate this Lease and repossess the Demised Premises, with or without process of law, and without liability for so doing, upon giving thirty (30) days written notice to Lessee of its intention to terminate, at the end of which time all the rights hereunder of the Lessee shall terminate, unless the default, which shall have been stated in such notice, shall have been cured within such thirty (30) days. The notice shall be final and the City shall at its option (1) cancel and terminate all of the rights hereunder of the Lessee, reenter the Demised Premises, remove therefrom all property of the Lessee and store the same at the expense of the Lessee, or (2) elect to proceed under subparagraph C. below.



If City elects to terminate, Lessee shall be liable to City for all amounts owing at the time of termination, including but not limited to compensation due plus interest thereon at the Past Due Interest Rate together with any other amount to fully compensate City for all loss of compensation, damages, and costs, including attorney's fees, caused by Lessee's failure to perform its obligations hereunder, or which in the ordinary course would likely result therefrom.

C. The City may elect to reenter and take possession of the Demised Premises and expel Lessee or any person claiming under Lessee, and remove all effects as may be necessary, without prejudice to any remedies for damages or breach. Such reentry shall not be construed as termination of this Lease unless a written notice specifically so states; however, the City reserves the right to terminate the Lease at any time after reentry. Following reentry, the City may make any use of the Demised Premises, or any portion thereof, on such terms and conditions as the City may choose, and may make such repairs or improvements as it deems appropriate to accomplish the new use.

Lessee shall be liable to City for all costs of reentry including attorney's fees and repairs or improvements. Notwithstanding re-entry by the City, Lessee shall continue to be liable for all amounts due as compensation under this Lease, on the dates specified and in such amounts as would be payable if default had not occurred. Upon expiration of the Term, or any earlier termination of the Lease by the City, the City shall refund, without interest, any amount which exceeds the compensation, damages, and costs payable by Lessee under this Lease.

### **10.03 REMEDIES CUMULATIVE**

The remedies provided in this Lease shall be cumulative and shall in no way affect any other remedy available to City under law or equity.

### **10.04 ADMINISTRATIVE HEARING**

Disputes arising out of this Lease if unresolved within such thirty (30) days, then such dispute, or any other disputes arising under or related to this Lease, may be resolved by seeking redress in the District Court of the State of Colorado Second Judicial District; provided, that City shall retain its right to obtain an order of eviction in accordance with applicable state law.

### **10.05 WAIVERS**

No failure of a non-defaulting Party to insist upon the strict performance of a term, covenant or agreement contained in this Lease, no failure by a non-defaulting Party to exercise any right or remedy under this Lease, and no acceptance of full or partial payment during the continuance of any default by a defaulting Party shall constitute a waiver of any such term, covenant or agreement or a waiver of any such right or remedy or a waiver of any default by a defaulting Party.

### **10.06 APPROPRIATION**

Notwithstanding any other term or condition of this Lease, it is understood and agreed that the obligation of the City for all or any payment obligation, whether direct or contingent, shall only extend to payment of monies duly and lawfully appropriated by the City Council for the purpose of this Lease, encumbered for the purpose of this Lease, and paid into the Treasury of the City. The Lessee acknowledges that (i) the City does not by this Lease irrevocably pledge present cash

reserves for payments in future fiscal years, and (ii) this Lease is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

## **SECTION 11 DAMAGE, DESTRUCTION OR LOSS**

### **11.01 DAMAGE TO OR DESTRUCTION OF DEMISED PREMISES**

If the Demised Premises, or any portion thereof, is destroyed or damaged by fire or otherwise to an extent which renders it unusable, City may rebuild or repair any portions of the building structure destroyed or damaged, and, if the cause was beyond the control of Lessee, the obligation of Lessee to pay the compensation hereunder shall abate as to such damaged or destroyed portions during the time they are unusable. If the City elects not to proceed with the rebuilding or repair of the building structure, it shall give written notice of its intent within ninety (90) days after the destruction or damage. Lessee may then, at its option, cancel and terminate this Lease.

### **11.02 COOPERATION IN THE EVENT OF LOSS**

If the City elects to rebuild, Lessee must replace the Generating Facility at its sole cost in July, 2010 dollars, subject to increase or deduction according to the Engineering News Record Building Cost Index for the Denver, Colorado area, and building and construction standards as set forth in the Building Code and in applicable Public Works Standard Specifications for Construction for the City, as amended. City and Lessee shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss or damage.

### **11.03 LOSS OR DAMAGE TO PROPERTY**

City shall not be liable for any loss of property by theft or burglary from the Demised Premises or for any damage to person or property on the Demised Premises resulting from operating the elevators, or electric lighting, or water, rain or snow, which may come into or issue or flow from any part of the Premises, or from the pipes, plumbing, wiring, gas or sprinklers thereof or that may be caused by the City's employees or any other cause, and Lessee agrees to make no claim for any such loss or damage at any time, except for any abatement of compensation or right to insurance proceeds provided for in this Section.

### **11.04 MUTUAL WAIVER/INSURANCE COVERAGE**

City and Lessee each waive any and every claim for recovery from the other for any and all loss of or damage to the Demised Premises or to the contents thereof, which loss or damage is covered by valid and collectible fire and extended insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Since this mutual waiver will preclude the assignment of any such claim by subrogation or otherwise to an insurance company or any other person, Lessee agrees to give to each insurance company which has issued, or may issue, to the Lessee policies of fire and extended coverage insurance, written notice of the terms of this mutual waiver, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverage by reason of this waiver.

**SECTION 12**  
**MISCELLANEOUS PROVISIONS**

**12.01 ADVERTISING AND PUBLIC DISPLAYS**

Lessee shall not install or have installed or allow to be installed upon or within the Demised Premises, without the prior written approval of the Manager or his/her authorized representative, any sign, either lighted or unlighted, poster or other display of advertising media, including material supplied by manufacturers of merchandise offered for sale, as well as other types of display permitted by City zoning standards. Permission will not be granted for any advertising which fails to comply with Denver Marketing Office standards or City zoning standards, or any advertising material, fixture or equipment which extends beyond the Demised Premises. Each Party agrees that it shall not issue any formal press release regarding the Generating Facility without the prior consent of the other, and each Party agrees not to unduly withhold, condition or delay any such consent. On all permitted signage at the Premises, and in all publicly distributed written materials issued by either Party that refer to the Generating Facility by name, such name will contain a statement to the effect attributing ownership and operation of the Generating Facility.

**12.02 AGREEMENT BINDING UPON SUCCESSORS**

This Lease Agreement, subject to the provisions of the section entitled "Assignment", shall be binding upon and extend to the heirs, personal representatives, successors and assigns of the respective Parties hereto.

**12.03 AGREEMENT MADE IN COLORADO**

This Lease shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado.

**12.04 ASSIGNMENT**

A. Assignment by Lessee. The Lessee's right, title and interest in, to, and under this Lease and the Generating Facility and all proceeds therefrom, may be assigned and reassigned in whole or in part (including by way of any direct or collateral assignment) (i) in accordance with Section 28 of the Power Purchase Agreement; (ii) to one or more of Lessee's affiliates, (iii) to one or more affiliates or third parties in connection with a sale-and-leaseback or other financing transaction, (iv) to any person or entity succeeding to all or substantially all of the assets of Lessee, or (v) to a successor entity in a merger or acquisition transaction without the necessity of obtaining the consent of the City; provided that any such assignment does not change any obligation of the City. Any such assignment shall not be effective until the Manager of General Services has received written notice, signed by the assignor, of the name and address of the assignee. The City hereby agrees that the Lessee may, without notice to the City, sell, dispose of, or assign this Lease through a pool, trust, limited partnership, or other similar entity, whereby one or more interests are created in this Lease or the Generating Facility.

The Lessee and the City agree that any such assignment of this Lease or the Power Purchase Agreement is not intended as the offer or sale of a security, and the Lessee and all assignees hereof understand and agree that: (i) the City shall not be responsible for any information provided to any assignee or subassignee in connection with any such assignment and (ii) if any such assignment constitutes the offering of a security under applicable securities laws, the City shall not be responsible for compliance with any such laws, and any offering or other disclosure document delivered by the Lessee in connection with such assignment shall include a statement to the effect that the City has assumed no responsibility for such document and has neither reviewed nor undertaken to verify any information contained therein.

The Manager of General Services shall (i) retain all assignment notices as a register of all assignees (other than registered owners of certificates of participation) and (ii) shall be responsible for making any payments under the terms of this Lease or the Power Purchase Agreement only if an appropriation has been effected by the City for such purpose, and *only* to the Lessee at the address set forth in herein, notwithstanding any assignment by the Lessee pursuant to the terms of this section, unless this Lease is modified in a writing signed by the Parties amending this Lease to so provide for different payment terms.

City agrees to notify in writing, an assignee which has been approved by an amendment to this Lease, at the address to be designated by assignee upon not less than five (5) business days' written notice to City prior to any notice by City hereunder, of any act or event of default of Lessee under this Lease of which City has knowledge that would entitle City to cancel, terminate, annul, or modify this Lease or dispossess or evict Lessee from the Demised Premises or otherwise proceed with enforcement remedies against Lessee, and assignee shall have the same amount of time as Lessee, but at least ten (10) days with respect to any monetary default and at least thirty (30) days with respect to any non-monetary default, to cure any default by Lessee under the Lease; provided that in no event shall assignee be obligated to cure any such default.

City consents to assignee accessing the Demised Premises and the Premises, upon three (3) days notice for the purpose of inspecting the Generating Facility.

Assignment and Subleasing by the City. Through December 31, 2017, none of the City's right, title and interest in, to and under this Lease or any portion of the Generating Facility may be assigned or encumbered by the City for any reason; except if the City obtains the prior written consent of the Lessee and, upon request of the Power Provider and at Power Provider's expense, an opinion of nationally recognized Counsel that such assignment will be permissible under applicable New Markets Tax Credit rules.

#### **12.05 FORCE MAJEURE**

Neither Party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Lease due to strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such Party is not responsible or which is not in its power to control, but in

no event shall this paragraph be construed so as to allow Lessee to reduce or abate its obligation to pay the annual rent herein, or any other compensation due hereunder.

#### **12.06 INCONVENIENCES DURING CONSTRUCTION**

Lessee recognizes that from time to time during the Term of this Lease, it may be necessary for City to commence or complete extensive programs of construction, expansion, relocation, maintenance and repair in order that the Premises and its Facility may be completed and operated in accordance with any present or future master layout plan, and that such construction, expansion, relocation, maintenance and repair may inconvenience the Lessee in its operation at the Premises. Lessee agrees that no liability shall attach to City, its officers, agents, employees, contractors, subcontractors and representatives by way of such inconveniences, and Lessee waives any right to claim damages or other consideration therefrom.

Lessee understands and agrees that due to the extended length of the Term of this Lease, the City may determine that it has become necessary for the City to replace the roof or perform other construction related maintenance of the Premises, including the Demised Premises. In the event that the City determines to replace the roof or conduct other maintenance impacting the Demised Premises, the Parties shall cooperate as provided in paragraph 3(m) of the Power Purchase Agreement.

#### **12.07 MASTER PLAN**

Lessee agrees that no liability shall attach to the City, its officers, agents and employees by reason of any efforts or action toward implementation of any present or future master layout plan for the Premises, and waives any right to claim damages or other consideration arising therefrom.

#### **12.08 NONDISCRIMINATION**

In connection with the performance of work under this Lease, Lessee agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability, and Lessee further agrees to insert the foregoing provision in all subcontracts hereunder.

#### **12.09 NOT PARTNERSHIP**

It is expressly understood and agreed that neither Party shall be construed or held to be a partner, associate, agent, representative, or joint venturer of the other Party in the conduct of its business. Lessee shall at all times have the status of an independent contractor without the right or authority to impose tort or contractual liability upon the City.



#### **12.14 THIRD PARTIES**

This Lease does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties (except parties to whom the Lessee may assign this Lease in accordance with the terms hereof, and except any successor to the City) any right to claim damages or to bring any suit, action or other proceeding against either the City or the Lessee because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

#### **12.15 USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS**

Lessee, its officers, agents and employees shall cooperate and comply with the provisions of the Federal Drug-Free Workplace Act of 1988 and Denver Executive Order No. 94, or any successor thereto, concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring Lessee from City Facility or participating in City operations.

#### **12.16 CITY SMOKING POLICY**

Lessee and its officers, agents and employees shall cooperate and comply with the provisions of Denver Revised Municipal Code Sec. 24-304 prohibiting smoking in City buildings and Facility.

Lessee agrees that it will prohibit smoking by its employees and the public in the Demised Premises.

#### **12.17 ENTIRE AGREEMENT; AMENDMENT**

The Parties acknowledge and agree that the provisions herein together with the Power Purchase Agreement constitute the entire agreement and that all representations made by any officer, agent or employee of the respective Parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications, shall be valid unless executed by an instrument in writing by all the Parties or their respective successors in interest with the same formality as this Lease.

#### **12.18 FINAL APPROVAL**

This Lease is expressly subject to and shall not be or become effective or binding on the City until approved by the City Council and fully executed by all signatories of the City and County of Denver.

#### **12.19 ESTOPPEL CERTIFICATES**

From time to time, upon written request by either Party (or Lessee's lender or the City's COP Trustee), the other Party shall provide within thirty (30) days thereafter an estoppel certificate attesting, to the knowledge of the other Party, of the other Party's compliance with the terms of this Lease or detailing any known issues of noncompliance. If the other Party fails to deliver such a statement to the requesting Party within such thirty (30)-day period, then the requesting Party may make an additional written demand for such statement and if the other Party does not

deliver the statement within fifteen (15) days following such additional written demand from the requesting Party, then such failure shall constitute an event of default under this Lease.

*Remainder of page left intentionally blank.*



IN WITNESS WHEREOF, the Parties have executed this Lease the day and year first above written.

ATTEST:

CITY AND COUNTY OF DENVER

By \_\_\_\_\_  
STEPHANIE Y. O'MALLEY, Clerk and Recorder,  
Ex-Officio Clerk of the City and County of Denver

By \_\_\_\_\_  
Mayor

APPROVED AS TO FORM

RECOMMENDED AND APPROVED:

DAVID R. FINE,  
Attorney for the City and County of Denver

By \_\_\_\_\_  
Manager of General Services

By \_\_\_\_\_  
Assistant City Attorney

By \_\_\_\_\_  
Director of Greenprint

REGISTERED AND COUNTERSIGNED:


By \_\_\_\_\_  
Manager of Finance

By \_\_\_\_\_  
Auditor  
Contract Control No.RC0A009

THE CITY

ATTEST:

**MAIN STREET POWER COMPANY, INC.**

By   
John J. Huggins, Assistant Secretary

By   
T. Amory Host

Title President and Chief Executive Officer

LESSEE

IN WITNESS WHEREOF, the Parties have executed this Lease the day and year first above written.

ATTEST:

CITY AND COUNTY OF DENVER


By \_\_\_\_\_  
STEPHANIE Y. O'MALLEY, Clerk and Recorder,  
Ex-Officio Clerk of the City and County of Denver

By \_\_\_\_\_  
Mayor

APPROVED AS TO FORM

RECOMMENDED AND APPROVED:

DAVID R. FINE,  
Attorney for the City and County of Denver

By  \_\_\_\_\_  
Manager of General Services

By \_\_\_\_\_  
Assistant City Attorney

By \_\_\_\_\_  
Director of Greenprint

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_  
Manager of Finance

By \_\_\_\_\_  
Auditor  
Contract Control No.RC0A009

THE CITY

ATTEST:

**MAIN STREET POWER COMPANY, INC.**

By \_\_\_\_\_  
John J. Huggins, Assistant Secretary

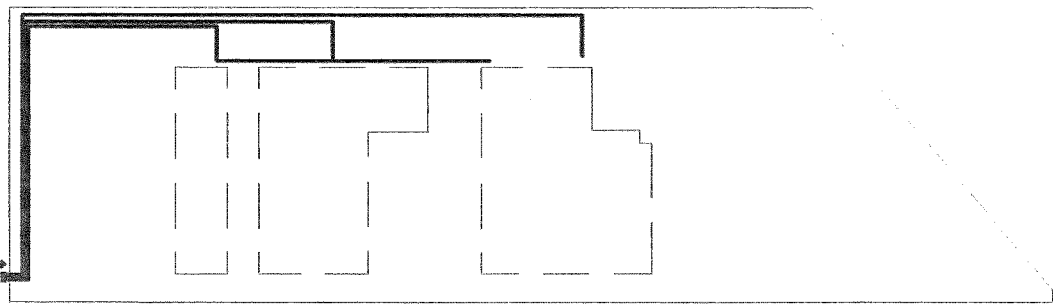
By \_\_\_\_\_  
T. Amory Host

Title President and Chief Executive Officer

LESSEE

EXHIBIT A  
DEMISED PREMISES PLAN

Combined generating Capacity (kWDC)	Panel Manufacturer	Panel DC Rating	Array Tilt (deg)	Number of Modules	Inverter Manufacturer	Inverter Model	Mounting Method	Mounting System
95.68	Canadian Solar	230 W	10 deg	416	SatCon	PVS-100	Ballast	Grizzly Bear (FR-IB)



- Demised
- Premises
- Conduit
- Building
- Inverter
- ◆ Meter

Module	Tilt Angle	No. of Modules	Power Output (DC)	Drawn by	Date	Customer
C-S6P-230	10 deg	416	95.68 kW	JPL	6/15/2010	City and County of Denver
Main Street Power, 1245 Pearl Street Suite 201, Boulder, CO 80302; ph. 303.444.3020						Project
						Location
						Park Avenue Warehouse 3375 Park Avenue, Denver, Co



EXHIBIT B  
DESCRIPTION OF PREMISES

Park Avenue Warehouse  
Located at  
3375 Park Avenue  
Denver, Colorado

EXHIBIT C  
PURCHASE PRICE SCHEDULE

Exhibit C--Purchase Option Summary Schedule		
Park Avenue Warehouse	Site Size in kW:	95.68
Year of Commercial Operation	Purchase Option Price per kW	Total Purchase Option Price
1	N/A	N/A
2	N/A	N/A
3	N/A	N/A
4	N/A	N/A
5	N/A	N/A
6	N/A	N/A
7	N/A	N/A
8	\$1.75	\$167,440.00
9	N/A	N/A
10	\$1.65	\$157,872.00
11	N/A	N/A
12	\$1.55	\$148,304.00
13	N/A	N/A
14	\$1.45	\$138,736.00
15	N/A	N/A
16	\$1.35	\$129,168.00
17	N/A	N/A
18	\$1.25	\$119,600.00
19	N/A	N/A
20	\$1.15	\$110,032.00
21	N/A	N/A
22	\$0.85	\$81,328.00
23	N/A	N/A
24	\$0.55	\$52,624.00
End of 25	\$0.00	\$0.001

EXHIBIT D

CERTIFICATE OF INSURANCE





EXHIBIT E  
LESSEE'S PROPOSAL

**INSURANCE SUMMARY**

Main Street Power  
 1245 Pearl St, ste 201  
 Boulder, CO 80301

City of Denver

City Contract Number

SITE ID	Site Name	Site Street Address	Site City	site zip	PPA	Lease	NMTC	System Size (DC kWp)
DENV-CO-ART-X	Arte P. Taylor Municipal Center	4685 Peoria Street	Denver	80239	CE0A029	RC0A012	no	102.96
DENV-CO-CPC-X	Central Platte Campus Fleet Service Center	1271 West Bayaud Avenue	Denver	80223	CE0A030	RC0A013	yes	102.96
DENV-CO-CSW-X	City Surplus Warehouse	671 South Jason Street	Denver	80223	CE0A025	RC0A008	yes	78
DENV-CO-DIT-X	Information Technology (DOIT)	10 Galapago Street	Denver	80223	CE0A020	RC0A004	yes	49.92
DENV-CO-DWW-X	Wastewater Management Building	2000 West 3rd Avenue	Denver	80223	CE0A031	RC0A014	yes	102.96
DENV-CO-HBR-X	Hiawatha Davis Recreation Center	3334 Holly Street	Denver	80207	CE0A021	RC1A000	yes	49.92
DENV-CO-HUR-X	Parks and Recreation Maintenance - Huron Street	945 South Huron Street	Denver	80223	CE0A022	RC0A005	yes	49.92
DENV-CO-JAS-X	Parks and Recreation Maintenance - Jason Street	4495 Jason Street	Denver	80211	CE0A027	RC0A010	yes	99.84
DENV-CO-PAW-X	Park Avenue Warehouse	3375 Park Avenue	Denver	80203	CE0A026	RC0A009	yes	99.84
DENV-CO-PS1-X	Denver Police Department District 1	1311 West 46th Avenue	Denver	80211	CE0A019	RC0A003	yes	31.2
DENV-CO-RBC-X	Roslyn Building C	5440 Roslyn Street	Denver	80266	CE0A028	RC0A011	no	102.96
DENV-CO-RRC-X	Rude Recreation Center	2855 West Holden Place	Denver	80204	CE0A024	RC0A007	yes	53.04
DENV-CO-SRC-X	Stapleton Recreation Center	5090 Broadway	Denver	80216	CE0A023	RC0A006	yes	49.92
<b>TOTAL</b>								<b>973</b>

Number of Panels	Demised Premises Square Footage	Install		Panels	Inverters	Racking/Ballast	Admin. Costs	Total 2 Project Value					
		SS & MW							Suntech 210	SatCon-20Yr	Sunlink		
442	12,155	\$	112	\$	180	\$	43	\$	39	\$	5	\$	380
442	9,555	\$	112	\$	180	\$	43	\$	39	\$	5	\$	380
325	8,938	\$	85	\$	137	\$	33	\$	30	\$	4	\$	288
208	5,720	\$	54	\$	87	\$	21	\$	19	\$	2	\$	184
442	7,735	\$	112	\$	180	\$	43	\$	39	\$	5	\$	380
208	5,720	\$	54	\$	87	\$	21	\$	19	\$	2	\$	184
208	5,720	\$	54	\$	87	\$	21	\$	19	\$	2	\$	184
416	11,440	\$	109	\$	175	\$	42	\$	38	\$	5	\$	368
416	11,440	\$	109	\$	175	\$	42	\$	38	\$	5	\$	368
130	3,575	\$	34	\$	55	\$	13	\$	12	\$	2	\$	115
442	12,155	\$	112	\$	180	\$	43	\$	39	\$	5	\$	380
221	6,078	\$	58	\$	93	\$	22	\$	20	\$	3	\$	196
208	5,720	\$	54	\$	87	\$	21	\$	19	\$	2	\$	184
4,108		\$	1,061	\$	1,704	\$	409	\$	370	\$	49	\$	3,592

EXHIBIT F  
PREVAILING WAGE SCHEDULE



**DENVER**  
THE MILE HIGH CITY

Career Service Authority  
Denver's Human Resource Agency

201 W. Colfax, Department 412  
Denver, CO 80202  
p: 720.913.5751  
f: 720.913.5720  
[www.denvergov.org/csa](http://www.denvergov.org/csa)

TO: All Users of the City of Denver Prevailing Wage Schedules  
FROM: Meredith Creme, Staff Human Resources Professional  
DATE: Friday June 12, 2009  
SUBJECT: Latest Change to Prevailing Wage Schedules

The Career Service Authority Board in their meeting held on November 3, 2005, approved to use the last comprehensive prevailing wage schedule for Heavy and Highway projects, which was published on March 1, 2002, to fill in for missing rates from subsequent Heavy and Highway wage schedules. The missing rates will be provided as supplemental to the Davis Bacon Heavy and Highway rates issued by CSA.

With regards to the Building rates, the last comprehensive prevailing wage schedule for Building projects which was published on November 9, 2001 will continue to be used to fill in for missing rates from subsequent Building Construction schedules. The missing rates will be provided as supplemental to the Davis-Bacon Building rates issued by CSA.

The attached Prevailing Wage Schedule is effective as of **Friday June 12, 2009** and applies to the City and County of Denver for **BUILDING CONSTRUCTION PROJECTS** (does not include residential construction consisting of single family homes and apartments up to and including 4 stories) in accordance with the Denver Revised Municipal Code, Section 20-76(c).

General Wage Decision No. CO080004  
Superseded General Decision No. CO20070004  
Modification No. 16  
Publication Date: 06-05-2009  
(6 pages)

Unless otherwise specified in this document, apprentices shall be permitted only if they are employed pursuant to, and individually registered in, a bona fide apprenticeship program registered with the U.S. Department. Of Labor (DOL). The employer and the individual apprentice must be registered in a program, which has received prior approval, by the DOL. Any employer, who employs an apprentice and is found to be in violation of this provision, shall be required to pay said apprentice the full journeyman scale.

Questions call (720) 913-5722

Attachments as listed above.



General Decision Number: CO080004 06/05/2009 CO4

Superseded General Decision Number: CO20070004

State: Colorado

Construction Type: Building

County: Denver County in Colorado.

BUILDING CONSTRUCTION PROJECTS (does not include residential construction consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	02/08/2008
1	02/15/2008
2	03/07/2008
3	04/04/2008
4	05/02/2008
5	06/06/2008
6	07/04/2008
7	08/15/2008
8	09/05/2008
9	10/03/2008
10	10/24/2008
11	11/07/2008
12	12/05/2008
13	01/02/2009
14	04/03/2009
15	05/01/2009
16	06/05/2009

ASBE0028-001 01/01/2009

	Rates	Fringes
Asbestos Workers/Insulator (Includes application of all insulating materials, protective coverings, coatings and finishings to all types of mechanical systems).....	\$ 22.34	11.13

BRCO0007-001 01/01/2009

	Rates	Fringes
BRICKLAYER.....	\$ 22.95	9.07

BRCO0007-005 05/01/2008

	Rates	Fringes
TILE SETTER.....	\$ 25.45	8.28

-----  
CARP0001-004 05/01/2008

	Rates	Fringes
Carpenters:		
Acoustical, Drywall		
Hanging/Framing and Metal		
Stud, Form Building/Setting.	\$ 25.75	8.49

-----  
CARP2834-001 05/01/2008

	Rates	Fringes
MILLWRIGHT.....	\$ 26.59	10.20

-----  
\* ELEC0068-002 06/01/2009

	Rates	Fringes
ELECTRICIAN		
(Includes Low Voltage		
Wiring and Installation of		
Fire alarms, Security		
Systems, Telephones,		
Computers and Temperature		
Controls).....	\$ 31.00	11.40

-----  
ELEV0025-002 01/01/2009

	Rates	Fringes
Elevator Constructor.....	\$ 35.71	18.285

FOOTNOTE:

- a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit.

PAID HOLIDAYS: New Year's Day; Memorial Day; Independence Day; Labor Day; Veterans Day; Thanksgiving Day; Friday after Thanksgiving Day; and Christmas Day.

-----  
ENGI0009-003 05/01/2009

	Rates	Fringes
Power equipment operator -		
crane		
141 tons and over.....	\$ 24.88	9.22
50 tons and under.....	\$ 23.82	9.22
51 to 90 tons.....	\$ 23.97	9.22
91 to 140 tons.....	\$ 24.12	9.22

-----  
IRON0024-001 11/01/2008

	Rates	Fringes
--	-------	---------



IRONWORKER, STRUCTURAL.....\$ 24.80 8.86

LABO0720-003 05/01/2003

Rates Fringes

Laborers:

Concrete/Mason Tenders.....\$ 14.20 4.55

PAIN0079-002 12/02/2008

Rates Fringes

Drywall Finisher/Taper

Hand.....\$ 18.69 5.59

Tool.....\$ 19.04 5.59

Painters:

Brush and Roller.....\$ 17.99 5.59

Spray.....\$ 18.99 5.59

PAPERHANGER.....\$ 18.69 5.59

PAIN0930-001 07/01/2008

Rates Fringes

GLAZIER.....\$ 27.55 6.75

PLAS0577-001 05/01/2007

Rates Fringes

Cement Mason/Concrete Finisher...\$ 23.80 8.25

PLUM0003-001 08/02/2008

Rates Fringes

PLUMBER

(Excluding HVAC work).....\$ 33.02 10.20

PLUM0208-001 06/01/2008

Rates Fringes

PIPEFITTER

(Including HVAC pipe).....\$ 32.95 10.27

SFCO0669-001 04/01/2009

Rates Fringes

SPRINKLER FITTER.....\$ 33.26 15.30

SHEE0009-001 07/01/2008

Rates Fringes

Sheet metal worker  
 (Includes HVAC duct and  
 installation of HVAC  
 systems).....\$ 29.30                    11.32

---

SUCO2001-011 12/20/2001

	Rates	Fringes
Carpenters:		
All Other Work.....	\$ 16.12	2.84
Ironworkers:		
Reinforcing.....	\$ 18.49	3.87
Laborers:		
Brick Finisher/Tender.....	\$ 12.78	1.41
Common.....	\$ 10.62	2.09
Power equipment operators:		
Mechanic.....	\$ 18.48	

---

WELDERS - Receive rate prescribed for craft performing  
 operation to which welding is incidental.  
 =====

Unlisted classifications needed for work not included within  
 the scope of the classifications listed may be added after  
 award only as provided in the labor standards contract clauses  
 (29CFR 5.5 (a) (1) (ii)).

---

In the listing above, the "SU" designation means that rates  
 listed under the identifier do not reflect collectively  
 bargained wage and fringe benefit rates. Other designations  
 indicate unions whose rates have been determined to be  
 prevailing.

---

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can  
 be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on  
 a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests  
 for summaries of surveys, should be with the Wage and Hour  
 Regional Office for the area in which the survey was conducted

because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====  
END OF GENERAL DECISION

**Career Service Authority-Supplemental to the Davis-Bacon Building rates**  
**(Specific to the Denver projects)**  
**(Supp #68, Date: 06-12-09)**

(The following rates are from the Fed Davis-Bacon Build-Mod No. 8, 11/09/01 to fill in for missing rates from subsequent Build Construction Schedules)

	<u>Rates</u>	<u>Fringes</u>
• Boilermakers	21.34	11.04
• Power Equip Operator (Local #9)		
Concrete Mixers:		
Less than 1 yd.	19.22	5.17
1 yd. And over	19.37	5.17
Drillers	19.22	5.17
Loaders over 6 cu yd	19.37	5.17
Oilers	18.52	5.17
• Soft Floor Layers	15.70	5.19
• Ironworkers (Ornamental) use current Structural rate published by the Federal Davis-Bacon rates issued by CSA.		
• Laborers:		
Concrete Saw	13.89	-
• Plasters	16.10	-
• Plaster Tenders	10.79	-
• Power Equip Operator:		
Backhoe	13.84	2.96
Loader up to and incl 6 cu Yd	14.15	3.03
Motor Grader	14.48	3.49
Roller	14.59	-
• Truck Drivers:		
Dumps:		
6 to 14 cu yds	13.05	3.49
15 to 29 cu yds	13.12	3.49
Flatbed	14.71	2.94
Semi	13.85	-
• To determine the Tile Setters-Marble Mason-Terrazzo mechanic rates—Use Davis Bacon-Building rates adopted by the Career Service Board.		
• To determine the Tile Finisher-Floor Grinder-Base Grinder—Use current Career Service Prevailing Wage Schedules.		
• Caulkers—Receive rate prescribed for craft performing operation to which caulking is incidental .i.e. glazier, painter, brick layer, cement mason.		
• Use the "Carpenters—All Other Work" rates published by the federal Davis Bacon rates for batt insulation, pre-stress concrete and tilt up concrete walls, Roofers (including foundation waterproofing).		
• Use the "Laborer—Common", rates published by the federal Davis Bacon rates for General Housekeeping, Final Cleanup and Fence Installer.		