



## MAYOR AND COUNCIL COMMUNICATION

DATE: October 4, 2016  
CONSENT  
ITEM #: 14  
MOTION

**AGENDA ITEM:** Xcel Holiday Lighting Agreement

**SUBMITTED BY:** Rob Weldon, Public Works Director

**REVIEWED BY:** Kristina Handt, Administrator

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### **BACKGROUND:**

With the recent street reconstruction and municipal utility improvements that have taken place this past year on Lake Elmo Ave., there have also been improvements made to the overhead utilities that run through that area. Noticeable improvements to the overhead utilities include new wooden transmission poles and cleaner line runs. As a result of the installation of new transmission poles the city is no longer able to hang seasonal decorations and/or flags from the poles as was done in the past, without a signed agreement with Xcel Energy. Public Works was able to remove hardware from the poles that were removed but is prohibited to attach said hardware to the new poles. There is also no electrical hook-up on the new poles to allow the city to illuminate holiday decorations.

### **ISSUE BEFORE COUNCIL:**

Council is requested to approve and sign a Holiday Lighting Agreement with Xcel Energy to continue to hang seasonal decorations on poles owned by Xcel Energy for power transmission.

### **PROPOSAL DETAILS/ANALYSIS:**

Upon execution of the signed agreement with Xcel, power service will be reinstalled to 12 new poles along Lake Elmo Ave that have traditionally been used for holiday lighting. The agreement will not only allow the city use of the poles for holiday lighting but will also allow installation of hardware needed to fly flags along the street.

### **FISCAL IMPACT:**

There is to be no charge for the reinstallation of 12 electrical services. There will be an adjusted charge based on an estimated number of days the holiday lights are used and the amount of energy consumed by each.

It should be noted that in order to be more environmentally responsible the Public Works Department has installed LED light bulbs in the holiday decorations. Additionally, this was noted when communications with Xcel initially took place and is outlined on the 2016 Holiday Lighting form to be submitted

**OPTIONS:**

- Approve Holiday Lighting Agreement with Xcel Energy
- Deny Holiday Lighting Agreement with Xcel Energy
- Table Holiday Lighting Agreement with Xcel Energy

**RECOMMENDATION:**

Staff recommends approval of the Holiday Lighting Agreement with Xcel Energy for Holiday Lighting and Flag Display on Lake Elmo Ave. If removed from the consent agenda:

**Motion to approve the Holiday Lighting Agreements with Xcel Energy for Holiday Lighting and Flag Display on Lake Elmo Ave.**

## ELECTRIC SERVICE AGREEMENT

This Agreement is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between Northern States Power Company, d/b/a Xcel Energy, a Minnesota Corporation, hereinafter called “Xcel Energy” and \_\_\_\_\_, a Minnesota municipal corporation, hereinafter called the “Licensee”.

## RECITALS

1. Licensee and Xcel Energy have entered into a Seasonal Pole Use License Agreement pursuant to which Licensee will attach seasonally decorative lighting and associated equipment to Xcel Energy owned poles. This Electric Service Agreement covers only seasonally decorative lighting (“Lights”).
2. To accommodate Licensee’s need for electric service for Lights and Xcel Energy’s need to bill for such service, and in consideration of the covenants and premises set forth below, the parties agree to the terms set forth below.

## AGREEMENT

1. Kind of Service. Xcel Energy agrees to supply and Licensee agrees to accept electric service in the form of 1 Phase, 2 Wire, alternating current at a nominal frequency of 60 Hertz and at a nominal voltage of 120 VAC for Licensee’s use solely for the operation of Lights to be installed by Licensee at various locations within the geographical limits of the Licensee.
2. Capacity Commitment. Xcel Energy agrees to provide and keep available throughout the term of the Agreement for Licensee’s use at its equipment locations sufficient capacity necessary to provide Licensee with electric service for Lights.
3. Term. This Agreement shall commence on \_\_\_\_\_, 20\_\_\_ at 12:01 a.m. and shall continue until \_\_\_\_\_, 20\_\_\_ and, if not then terminated by at least thirty days prior written notice by either party, shall continue further until so terminated.
4. Rate. Licensee agrees to qualify for and elects the rate schedule now in effect being the one attached hereto (Rate Code: A18 (nonmetered)) as Exhibit 1.

5. Energy Usage for Billing Purposes.
  - a. Licensee agrees to supply Xcel Energy estimated energy usage for Lights on an annual basis on or before November 1 of each year.
  - b. Xcel Energy reserves the right to require periodic test metering of Lights to determine actual consumption and to adjust energy usage for billing purposes accordingly based on test results.
  
6. Group Bill. Xcel Energy will provide group billing of Licensee's Lights on one invoice.
  
7. Payment of Bills. All bills are payable at Xcel Energy's office on or before the date the bill is due for service supplied by Xcel Energy in the preceding billing period.
  
8. Terms and Conditions. The service hereunder shall be supplied for Licensee's use subject to the General Rules and Regulations of Xcel Energy on file with the state Regulatory Commission as they now exist or may hereafter be changed. A copy of such rules and regulations is available from Xcel Energy. Customer agrees to use electrical service only as herein stated and will not assign this Agreement except upon written consent of Xcel Energy.



Northern States Power Company  
d/b/a Xcel Energy

Licensee

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## SEASONAL POLE USE LICENSE AGREEMENT

THIS SEASONAL POLE USE LICENSE AGREEMENT ("Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between Northern States Power Company d/b/a Xcel Energy ("Xcel Energy") and \_\_\_\_\_, a Minnesota municipal corporation ("Licensee").

### RECITALS

WHEREAS, Xcel Energy owns certain poles ("Poles") for providing electrical services to Xcel Energy's customers located within the geographical limits of Licensee.

WHEREAS, Licensee wishes to license from Xcel Energy on a non-exclusive basis the use of certain portions of Xcel Energy's Poles for the sole purpose of attaching temporarily and seasonally decorative lighting and associated equipment owned and operated by Licensee ("Equipment"), to certain Poles located within the geographical limits of the Licensee.

WHEREAS, Xcel Energy is willing to permit the location of said Equipment on the Poles upon the terms and conditions stated in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### 1. USE.

- 1.1 Use of Poles. Licensee may submit to Xcel Energy Pole Permit Applications (each, a "PPA") as provided in Section 1.3 requesting to attach Equipment owned and operated by Licensee to specific Poles, solely for the purpose of seasonally decorative lighting. Such use, if approved in writing by Xcel Energy, shall be in accordance with Xcel Energy's Specifications For Attachment of Private Holiday Ornaments to Poles ("Specifications") made a part hereof as Exhibit A, as may be amended by Xcel Energy from time to time during the term of this Agreement and any extensions thereof, and the conditions of this Agreement. The parties agree that the portion of the Equipment described or depicted in Exhibit A as the "Decorations" will be attached to the Poles only seasonally, generally during the period of mid-November through mid-January each year. The balance of the Equipment, including, but not limited to, the conductor, conduit, weatherhead and disconnect box, shall remain attached to the Poles throughout the year. The use of the Equipment for purposes other than seasonally decorative lighting during the mid-November through mid-January time frame is prohibited.
- 1.2 Existing Equipment Attachments. Licensee's existing inventory of Equipment attachments to Poles at the date of this Agreement, if any, listed by location, is attached as Exhibit B. Xcel Energy reserves the right to conduct an audit of

Licensee's Equipment at any time to verify the attachment count and to confirm Equipment compliance with the Specifications, and terms and conditions of this Agreement.

- 1.3 Pole Permit Application (PPA). Licensee shall prepare and submit an original and one (1) copy of a PPA on the form marked and attached hereto as Exhibit C, as modified from time-to-time by Xcel Energy, when applying for permission to make Equipment attachments to any Pole owned by Xcel Energy. A PPA is intended to provide Xcel Energy with information necessary for a pre-construction inspection of the Pole(s) prior to permitting Licensee to attach to that Pole. A PPA shall include the specifications for the Equipment the Licensee is requesting to attach, and a map showing the location and nearest addresses of the Poles the Licensee desires to attach to. Licensee shall reimburse Xcel Energy for all costs and expenses associated with the pre-construction inspection of the PPA. Licensee shall not attach any Equipment to any Pole without the prior written approval of Xcel Energy.
- 1.4 Installation, Construction, Improvements, Maintenance, and Repairs. Upon written receipt of an approved PPA, the Licensee may attach the Equipment to the Poles as described in the PPA. The Equipment, in each and every location shall be erected, installed, maintained and removed in accordance with the requirements of the Specifications, the National Electric Safety Code, Current Edition, or any revisions thereof, and other generally applicable engineering standards and in compliance with any applicable rules, regulations or orders now in effect or hereafter issued by any federal or state commission or any other public authority having jurisdiction. After completing the installation of the Equipment, Licensee shall notify Xcel Energy in writing that installation is complete. Xcel Energy may then conduct a post-construction inspection to verify that the Equipment installation has been made consistent with the PPA and other requirements of this Agreement. Xcel Energy will then perform the necessary electric connection to energize the Equipment.
- 1.5 Operation. Licensee must, at Licensee's sole expense, comply with all laws, orders, ordinances, regulations and directives of applicable federal, state, county, and municipal authorities or regulatory agencies, including, but not limited to, the Federal Communications Commission, Federal Energy Regulatory Commission, the Occupational Safety and Health Administration, the National Electric Safety Code and the National Electrical Code, as they relate to the operation of the Equipment and the use of Xcel Energy's Poles.
- 1.6 Licensee's Employees and Contractors. In performing the work on the Poles hereunder, Licensee shall utilize only qualified and competent employees and contractors knowledgeable in the work to be performed who are familiar with the facilities and safe practices utilized in, on or around Xcel Energy's Poles.

- 1.7 No Modification. Licensee shall not modify or change the position of the Equipment attachments or place any additional facilities on the attachment, except with the prior express written consent of Xcel Energy.
- 1.8 Removal. Licensee may at any time remove the Equipment from any Pole or Poles for which it has an approved PPA. Licensee shall provide 60 days written notice prior to any removal that would require a disconnection from Xcel Energy's electric system. All disconnections will be performed by Xcel Energy. The notice shall indicate the specific Pole or Poles that are affected by the removal.
- 1.9 Subordination. Nothing in this Agreement shall be construed to in any way deny, prohibit or interfere with Xcel Energy's rights and ability to utilize its Poles for the furnishing of services to its customers. All rights of Licensee hereunder are subject and subordinate to Xcel Energy's rights to utilize its Poles. If at any time Xcel Energy determines that a Pole or space on a Pole occupied by the Equipment is required for the sole use of Xcel Energy or is no longer suitable for attachment of the Equipment because of safety or other considerations, Licensee must, at Licensee expense, comply with orders from Xcel Energy to rearrange, remove, or transfer the Equipment at Licensee's sole expense. Failure to comply within 30 days may result in either rearrangement, removal, or transferring of the Equipment by Xcel Energy at Licensee's sole expense.
- 1.10 Non-Interference. In the performance and exercise of Licensee's rights and obligations under this Agreement, the Equipment shall not interfere in any manner with Xcel Energy's use, maintenance and operation of the Poles or Xcel Energy's ability to provide service to its customers. Licensee shall not use, nor shall it permit its employees or contractors to use, operate or maintain any portion of the Equipment in any way which interferes with the operations of Xcel Energy, at any time, or other attaching parties of Xcel Energy.
- 1.11 Utilities. Xcel Energy will perform all electric connections and disconnections to Equipment. Payment for electric service necessary in connection with the Equipment shall be Licensee's sole responsibility and will be subject to the terms and conditions contained in the Electric Service Agreement attached as Exhibit D.
- 1.12 Inspection and Maintenance. Xcel Energy reserves the right to inspect the Equipment at reasonable intervals during the term hereof, and to require maintenance work by Licensee as necessary to maintain compliance with the Specifications and applicable codes, laws, and regulations. In the event any of Licensee's Equipment is found to be in non-compliance and Licensee fails or refuses to correct the non-compliance within thirty (30) days after being so notified in writing of the specifics of the non-compliance, Xcel Energy may perform the work or direct the performance of such work and charge Licensee for the reasonable, documented cost thereof. By reserving this right hereunder to inspect and to require or perform maintenance, Xcel Energy undertakes no



obligations, responsibilities or liabilities whatsoever with respect thereto, except to the extent of the gross negligence, or willful misconduct of Xcel Energy, its officers, directors, employees or agents. Xcel Energy's exercise of such rights shall be solely within Xcel Energy's discretion, provided the same are exercised in a non-discriminatory manner, and shall not relieve Licensee of its obligation to maintain the Equipment in compliance at all times.

1.13 Damage Repair; Risk to Equipment. In the course of installation, operation and maintenance of the Equipment, Licensee shall use due care, and any damage to Xcel Energy's Poles or other equipment and facilities shall, at the option of Xcel Energy, be either repaired by and the cost borne by Licensee or repaired by Xcel Energy and the cost thereof charged to Licensee. Xcel Energy shall have no liability to Licensee for any damage to, or destruction or failure to operate, of Equipment, and Licensee releases and waives any such liability of Xcel Energy and Licensee shall indemnify and hold harmless Xcel Energy from any claims relating to damage to, or destruction of or failure to operate of the Equipment, even if arising from the negligence of Xcel Energy; provided, this shall not release Xcel Energy from liability arising solely from Xcel Energy's gross negligence or willful misconduct.

1.14 Xcel Energy Inspection of Equipment. Any inspections of the Equipment by Xcel Energy are made at the option of and solely for the benefit of Xcel Energy and shall not relieve Licensee for full compliance with the terms and conditions of this Agreement.

2. PERMITS, LICENSES, GRANTS; NONEXCLUSIVE USE.

Licensee is solely responsible for obtaining from public authorities and private owners of real property all permits, licenses, certificates, franchises and grants, if any, necessary for the attachment and operation of the Equipment on the Poles. Licensee acknowledges and agrees that its use of the Poles as permitted under this Agreement is nonexclusive and Xcel Energy reserves the right to install and operate its own facilities on the Poles, and to enter into agreements or arrangements with third parties for attachments to the Poles, and that Licensee's rights hereunder are subordinate to all such other arrangements and agreements.

3. TERMINATION OF AGREEMENT.

3.1 Default. Xcel Energy shall have the right to terminate this Agreement in the event Licensee fails to perform or comply with an obligation under this Agreement and does not cure such failure within 30 days of Xcel Energy's written notice to Licensee identifying such failure.

- 3.2 Convenience. This Agreement shall continue in force until terminated by either party, at any time, on not less than 60 days prior written notice to the other party.
- 3.3 Removal of Equipment Upon Termination. Upon termination of this Agreement for any reason, Licensee shall remove all of the Equipment from the Poles at Licensee's sole cost and expense within thirty (30) days after termination, and, in the event Licensee fails to so remove the Equipment, Xcel Energy may do so and Licensee shall pay the reasonable, documented costs of such removal. Xcel Energy shall have no liability to Licensee for any damage to or destruction of Equipment removed by Xcel Energy after Licensee's failure to timely remove the Equipment.
- 3.4 Effect of Termination. Termination of this Agreement shall not relieve the parties of any obligations which accrued prior to such termination.
4. LICENSE FEES. Xcel Energy will not charge Licensee for the attachment of its Equipment to the Poles.
5. INSURANCE. During the term of this Agreement and so long as Licensee is using the Poles pursuant to this Agreement, Licensee shall maintain and shall require its contractors and subcontractors, which do any work, in connection with this Agreement, to maintain in full force and effect, with a carrier or carriers duly authorized to do business in the State of Minnesota, the following insurance coverage which may be modified from time to time by the Xcel Energy, as well as such insurance necessary to insure the indemnity obligations contained herein:
- a) Worker's compensation insurance complying with the laws of the State of Minnesota;
  - b) General liability insurance that includes property damage and bodily injury insurance with limits of not less than \$1,000,000.00 as to any one occurrence and \$1,000,000.00 in the annual aggregate.
  - c) Comprehensive Automobile Liability with combined single limits of not less than one million dollars (\$1,000,000).
  - d) Electrical contractors who are authorized to work in the supply space will be utilized by the Licensee to provide installation of a service duct for service conductors. These electrical contractors shall carry general liability insurance that includes property damage and bodily injury insurance with limits of not less than \$5,000,000.00 as to any one occurrence and \$5,000,000.00 in the annual aggregate. The general liability limits can be arranged under single policies for the full limits required, or by a combination of an underlying policy with the balance provided by an Excess or Umbrella policy.

It is understood that the limits of such insurance coverage shall not be construed to limit Licensee's liability under this Agreement. Such insurance shall name Xcel Energy, its officers, agents, and employees as additional insured. Licensee agrees to waive all rights of

subrogation against Xcel Energy, its officers, agents and employees, with regard to the insurance coverage provided herein. Licensee shall submit certificates of such insurance to Xcel Energy prior to the granting of any PPA hereunder, which shall provide for a thirty-day notice to Xcel Energy prior to any cancellation. In the event of cancellation, equivalent substitute insurance must be obtained so that appropriate insurance coverage exists at all times. Licensee shall assure that its insurance carriers shall maintain a rating by a national rating agency satisfactory to Xcel Energy during the term of this Agreement and any extensions thereto.

6. INDEMNIFICATION. In consideration for the license granted under this Agreement, Licensee shall indemnify, release, defend and hold harmless Xcel Energy and its affiliates, officers, agents and employees, from and against all claims or any liability to a third party, including reasonable attorneys' fees, and including but not limited to property or natural resource damage or remediation asserted by any public authority or other third party ("Claims"), arising out of or resulting from: (1) allegations of willful misconduct or negligence of the Licensee, its officers, employees, agents, subcontractors or representatives; (2) any material or equipment supplied by the Licensee relating to this Agreement; (3) any failure of the Licensee, its officers, employees, agents, subcontractors or representatives to comply with any term or condition of this Agreement; (4) the release of any hazardous substances in or around Xcel Energy's facilities caused by actions of Licensee or its employees, agents or contractors; or (5) exposure to hazardous substances by a third party or Licensee's employees, agents or contractors that are reasonably anticipated or expected to be present (based on industry knowledge) in or around Xcel Energy's facilities. Notwithstanding the foregoing, the Licensee has no obligation to indemnify Xcel Energy for Claims arising from Xcel Energy's gross negligence or willful misconduct.

7. LIMITATIONS ON LIABILITY. XCEL ENERGY SHALL NOT BE LIABLE TO LICENSEE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, TREBLE, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT ARISING OUT OF THIS AGREEMENT OR ANY OBLIGATION HEREUNDER.

8. ASSIGNMENT. Licensee has no right to assign, sublet, or otherwise transfer this Agreement, either in whole or in part, without the prior written consent of Xcel Energy.

9. AGREEMENT. This Agreement and each PPA constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained in this Agreement. There are no representations or understandings of any kind not set forth in this Agreement. Any amendments to this Agreement or any PPA must be in writing and executed by both parties.

10. CAPTIONS. The captions of this Agreement are inserted for convenience only and are not to be construed as part of this Agreement or the applicable PPA or in any way limiting the scope or intent of its provision.
11. NOTICE. Any notice or demand required to be given in this Agreement shall be made by certified or registered mail, return receipt requested or reliable overnight courier to the address of other parties set forth below:

Xcel Energy: Northern States Power Company d/b/a Xcel Energy  
Tom Breuckman, Facilities Attachments  
825 Rice Street  
St. Paul, MN 55117  
Telephone: (651) 229-2224

cc: Xcel Energy  
Attn: General Counsel  
414 Nicollet Mall  
Minneapolis, MN 55401  
Telephone: (612) 330-5500

Licensee:

Any such notice is deemed received one (1) business day following deposit with a reliable overnight courier or five (5) business days following deposit in the United States mails addressed as required above. Xcel Energy or Licensee may from time to time designate any other address for this purpose notice to the other party.

13. GOVERNING LAW. This Agreement and each PPA, and any disputes thereunder, are governed by and construed under the laws of the State of Minnesota.
14. NOT A JOINT VENTURE. Neither this Agreement nor any PPA establishes and shall not be construed to establish or create a partnership, joint venture, or other form of business association between Licensee and Xcel Energy.
15. NO THIRD-PARTY BENEFICIARIES. The provisions of this Agreement are for the benefit of the parties hereto and not for any other person. This Agreement shall not provide to any person not a party, assignee or successor of a party, and shall not be construed to provide any such third-party, with any remedy, claim, liability, reimbursement, cause of action or other privilege or right in excess of those existing without reference to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

NORTHERN STATES POWER COMPANY D/B/A XCEL ENERGY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**POLE LICENSE AGREEMENT**

**EXHIBIT A**

**Xcel Energy Specifications For Private Holiday Ornament Attachments  
To Poles**

**EXHIBIT B**

**EXISTING HOLIDAY LIGHTING ATTACHMENTS**

**EXHIBIT C**

**HOLIDAY LIGHTING  
POLE PERMIT APPLICATION**

**Xcel Energy's Permit #** \_\_\_\_\_.

**Licensee #** \_\_\_\_\_

This Pole Permit Application (PPA) is made to the Pole License Agreement between Northern States Power Company d/b/a Xcel Energy and \_\_\_\_\_ ("Licensee") dated \_\_\_\_\_, 20\_\_\_. Capitalized terms used in this PPA have the same meaning as such terms in the Pole License Agreement unless otherwise indicated.

A. To be completed by Licensee: Application is made for a permit to make attachments as follows:

1. Type and Number of Proposed Attachments:
2. Pole Locations (approximate address, also attach map):
3. Licensee Contact for Emergencies:
4. Description of proposed attachments (including a description of the Equipment and the manner in which the Equipment will be attached to, and removed from, the Poles): Attachment 2.
5. Special provisions:

Licensee

Northern States Power Company d/b/a Xcel Energy

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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



**EXHIBIT D**

**ELECTRIC SERVICE AGREEMENT**