

ENCROACHMENT AGREEMENT

This Encroachment Agreement (“Agreement”) is made as of the _____ day of July, 2023, by and between the City of Shakopee, a Minnesota municipal corporation (“City”) and Northern States Power Company, a Minnesota corporation (“Xcel Energy”), together the “Parties”.

RECITALS

- A. Xcel Energy is the owner of property located at 1200 70th Street South, City of Shakopee, County of Scott, State of Minnesota, legally described as follows:

The North 880.00 feet of the West 1375.00 feet of the South Half of the Northwest Quarter of Section 11, Township 115 North, Range 22 West, Scott County (the “Xcel Energy Property”).
- B. City is fee owner of certain real property located in City of Shakopee, Scott County, Minnesota, Property Identification Numbers 279020202 and 279110061, known as Quarry Lake Park (the “City Property”); and
- C. The Xcel Energy Property is subject to a License Agreement between the City and Xcel Energy dated November 30, 2020 (the “License Agreement”), that permits the City to construct, use and maintain a mountain bike park on the Xcel Energy Property; under Section 4(a) of said License Agreement, Xcel Energy and the City agreed to work together to establish new permanent access to the Blue Lake Generating Facility across City Property; and
- D. Xcel Energy would like to construct and install a private driveway as described and depicted on Exhibit A attached hereto (the “Improvements”) that will encroach onto City Property (the “Encroachment Area”), which Improvements shall include a control gate on the driveway; and

- E. The City is willing to permit Xcel Energy to encroach on City Property for the purposes as stated herein, on a non-exclusive basis, subject to the terms and conditions of this Agreement; and
- F. Xcel Energy is aware of the potential need by the City to terminate this Agreement should the City determine at its sole and absolute discretion the need to remove the encroachment.

AGREEMENT

NOW, THEREFORE, on the basis of the premises and the mutual covenants and agreements set forth in this Agreement, the parties agree as follows:

1. City hereby grants to Xcel Energy the non-exclusive right to enter upon and use the City Property for the purpose of construction and use of the Improvements.

2. The term of this Agreement shall be for a period of five (5) years, commencing on the date first above written extending thereafter on a year-to-year basis. City or Xcel Energy may terminate this Agreement for any reason or no reason by providing the other Parties 90 day's written notice directed to the last day of any one-year term. Notwithstanding any contrary provision contained in this Agreement, this Agreement shall automatically terminate in the event that the License Agreement is terminated for any reason other than by reason of termination of the License Agreement by Xcel Energy by reason of default of the City under the License Agreement after notice and failure to cure as required by the License Agreement.

3. Xcel Energy will, at its sole expense, construct, repair and maintain all of the Improvements within the Encroachment Area as shown on Exhibit A all in good condition and repair. Without limiting the foregoing, in the area where the bike trail and Xcel Energy driveway intersect, Xcel Energy and the City shall cooperate and work together to minimize the impact of the driveway on the bike trail, such as leaving such section of the driveway in gravel to prevent accidents.

4. Xcel Energy shall use and access the Improvements within the Encroachment Area but said access will be limited to routine passenger vehicles or light duty trucks and as depicted on Exhibit A. Delivery, industrial, heavy equipment, and truck traffic shall not use Xcel Energy's easterly access only and Xcel Energy shall use the Encroachment Area for such purposes. Notwithstanding any contrary provision contained in this Agreement, Xcel Energy's use and access of the Improvements within the Encroachment Area on weekends and holidays shall be limited to emergencies and on weekends during mountain bike events the City shall have the right to close the Improvements or restrict the Improvements and the Encroachment Area to use in connection with such mountain bike events.

5. The permission granted by the City in this Agreement is limited exclusively to the proposed Improvements within the Encroachment Area as described and depicted in Exhibit A. Nothing contained in this Agreement shall excuse Xcel Energy from procuring all required City permits for construction of the Improvements.

6. This Agreement shall not prevent or impair the use of the Encroachment Area for park, roadway or utility purposes by the City or any other entity entitled by law to so use the Encroachment Area. Nothing contained in this Agreement shall limit or restrict the City's rights under the License Agreement.

7. In the event the City needs to repurpose, construct, maintain, operate, repair, access, improve or remove any element located within the Encroachment Area and the Improvements unreasonably interfere with such action, the City shall provide notice of no less than 30 days to Xcel Energy pursuant to Paragraph 11 of this Agreement. The City's costs of removing or relocating the necessary portion of the Improvements in order for the City to exercise its property rights shall be paid by Xcel Energy within ninety (90) days of invoicing to Xcel Energy. Xcel Energy shall be responsible for the costs of restoring or reinstalling any of the Improvements that were removed. Any damages to the Improvements resulting from the City's activities shall be borne and assumed by Xcel Energy, provided, however, that the City shall be responsible for any damages caused by the gross negligence or willful misconduct of the City, its officials, employees, contractors and agents.

8. This Agreement shall run with the land and shall inure to the benefit of and be binding upon the parties to this Agreement and their respective successors and assigns.

9. Xcel Energy shall indemnify, hold harmless and defend the City, its officials, employees, contractors and agents, from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs or expenses (including reasonable attorneys' fees), arising from or in connection with or caused by any act, omission or negligence of, Xcel Energy's contractors, licensees, invitees, agents, servants or employees in connection with the construction, repair or maintenance of the Improvements.

10. Xcel Energy agrees not to suffer or allow any liens, claims and processes to be placed against the City's rights to or interest in the Encroachment Area as a result of the use of the Encroachment Area, including, without limitation, any liens for labor or materials provided for the construction, repair or maintenance of the Improvements.

11. Required notices to the parties to this Agreement shall be in writing, and shall either be hand delivered or mailed to the following addresses:

a) As to the City: City of Shakopee
485 Gorman Street
Shakopee, MN 55379
Attn: City Administrator

b) As to Owner: Xcel Energy
Attn: Siting and Land Rights
414 Nicollet Mall
Minneapolis, MN 55401

[signatures continued on the next page]

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

CITY OF SHAKOPEE

By: _____

Its: Mayor

By: _____

Its: City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by _____ and _____ the Mayor and City Administrator, respectively, of the City of Shakopee, Minnesota, a municipal corporation, on behalf of the City.

Notary Public

XCEL ENERGY

By: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by _____ the _____, of Xcel Energy, a Minnesota corporation on behalf of the corporation.

Notary Signature and Seal

This document was drafted by:
Xcel Energy
414 Nicollet Mall
Minneapolis, MN 55401

EXHIBIT A
DESCRIPTION AND DEPICION OF EASEMENT AREA AND THE IMPROVEMENTS

