

LICENSE AGREEMENT
(Quarry Lake Park – Blue Lake Generating Plant)

THIS LICENSE AGREEMENT, (the “Agreement”) dated effective the ____ day of _____, 2017, is by and between NORTHERN STATES POWER COMPANY, a Minnesota corporation, at an address of 414 Nicollet Mall, Minneapolis, MN 55401 (hereinafter referred to as “Xcel”) and the CITY OF SHAKOPEE, a municipal corporation, at an address of 129 Holmes St. S. Shakopee, MN 55379 (hereinafter referred to as “City”).

WITNESSETH

WHEREAS, Xcel is the fee owner of certain real property located in the City of Shakopee, Scott County, Minnesota, which is shown on the attached Exhibit “A” attached hereto, hereinafter referred to as “Licensed Property”, and

WHEREAS, City is the fee owner of certain real property located in the City of Shakopee, Scott County, Minnesota, lying north of and adjacent to, the Licensed Property. This property is shown on the attached Exhibit “B” attached hereto, hereinafter referred to as “City Property”, and

WHEREAS, Xcel owns and operates, on property east of and adjacent to Licensed Property, an electric generating plant known as the “Blue Lake Generating Plant”, and

WHEREAS, City desires to construct, use and maintain on the Licensed Property, non-motorized soft surface trails, as depicted on Exhibit A, and

WHEREAS, Xcel is willing to permit City the use of the Licensed Property for the purposes as stated herein, on a non-exclusive basis, subject to the terms and conditions of this Agreement, and

WHEREAS, City is aware of the proximity of the Licensed Property to the operating properties of Xcel and the potential need by the Xcel to terminate this Agreement if Xcel determines an operating need for the Licensed Property.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, Xcel and City agree as follows:

1. Grant of Right of Entry. Xcel hereby grants to City the non-exclusive right to enter upon and use the Licensed Property.
2. Term. The term of this License shall be for a period of five (5) years, commencing on the date first above written and extending thereafter on a year to year basis (the “Term”). Xcel may terminate this License for any reason or no reason by providing City 90 day’s written notice directed to the last day of any one year term.
3. Allowed Uses/Restrictions.

Use of Property:

- a) City shall use the Licensed Property to construct, use and maintain non-motorized soft surface trails ("Permitted Use"). This Agreement does not permit any other uses, or the construction of any structures, utilities, parking spaces, improvements or buildings on the Licensed Property without the prior written consent of Xcel.
- b) In the event of an emergency, the City agrees to allow Xcel ingress and egress access across City Property to the gated area at the Blue Lake Generating Plant. The access route is depicted in red and blue on Exhibit B.
- c) A set of construction plans for the Permitted Use must be submitted to Xcel for approval prior to the execution of this Agreement.
- d) The City shall bear the entire cost associated with the Permitted Use.
- e) The City is responsible to obtain all permits, authorizations or other regulatory approvals necessary for the development and operation of the Permitted Use. The City is solely responsible to meet all regulatory requirements for the construction and operation of any development. All developments must meet all existing permit requirements set forth in the Existing Agreements and all Applicable Laws.
- f) The grant to City under Paragraph 1 herein shall extend to City's employees, agents, independent contractors, subcontractors, volunteers, invitees, and suppliers.

4. Maintenance and Development of Property:

- a) City shall install temporary signage on the Site to notify members of the public and others of access restrictions, access hours, emergency contact information, and other items as set forth in this Agreement. City shall ensure all signage and any other items or equipment that are located or installed on the Licensed Property for the Permitted Use will be removed prior to the expiration of the Agreement. City shall ensure that there will be no signage or references that will defame or present Xcel in a negative or harmful way.
- b) City shall ensure Xcel or its contractors acting on behalf of Xcel has access to the Licensed Property at any and all times.
- c) City shall ensure all of the Licensed Property is kept free of rubbish, waste, debris and the Licensed Property is kept in a neat, safe and orderly condition. Upon expiration or termination of the Agreement the Licensed Property will be returned to Xcel in a cleaned and respectable condition.
- d) The Site shall not be used in any manner or form inconsistent with the Permitted Use of the Site stated herein.
- e) The City shall install a six foot chain link fence along the eastern side of the Licensed Property to provide security to the Blue Lake Generating Plant. The location and

construction plans must be submitted to Xcel for approval prior to the start of construction.

4. Default. City shall be in default hereunder for violation of any term or condition under this Agreement. If City is in default or if this License is terminated as provided in Section 3 above, it shall be lawful for Xcel to declare the Term ended, to enter the Licensed Property, either with or without legal process, and to remove City or any other person or persons from the Licensed Property, using such force as may be necessary, without being liable for prosecution, or for damages, and to repossess the Licensed Property free and clear of any right of City. If, at any time, this Agreement is terminated under this paragraph, City agrees to peacefully surrender the Licensed Property to Xcel immediately upon termination, and immediately stop work and remove all of City's equipment and possessions, and if City remains in possession of the Licensed Property, City shall be deemed guilty of forcible entry and detainer, and waiving notice, shall be subject to forcible eviction with or without process of law.

6. Compliance with Laws, Rules & Regulations. At its sole cost and expense, City shall give all necessary notices and obtain all required permits, licenses, authorizations and approvals and shall comply and ensure that all of its employees, agents, independent contractors, subcontractors, suppliers, invitees and representatives comply with all applicable federal, state and local laws, ordinances, governmental rules and regulations relative to the operations under this Agreement, including those relating to the preservation of the public health and safety, employment laws, environmental laws, zoning, ordinances, rules and regulations and those within the Occupational Safety and Hazard Act (OSHA). City shall be liable for any fines or assessments levied thereunder against City resulting from its acts or omissions hereunder.

7. Insurance. City warrants that it is able to comply with indemnity and insurance coverage requirements set forth in this Agreement. City shall direct that its contractors, subcontractors, or agents including, without limitation, all contractors, subcontractors, name Xcel as an additional insured under all policies of insurance carried by same and relating to work done at the Licensed Property.

8. Safety. City shall identify all hazardous and potentially hazardous areas on or about the Licensed Property and shall inform its employees, independent contractors, subcontractors, suppliers, invitees and representatives and members of the public so as to safeguard against any and all hazards or other safety risks.

9. Hazardous Materials. Except with the express written permission of Xcel, City shall not bring onto the License Property, or permit to be brought onto the Licensed Property, any hazardous or toxic substance, waste, pollutant, contaminant or material (including petroleum) regulated by the State of Minnesota, the United States Government, or any other local, state, or federal government authority with applicable jurisdiction ("Hazardous Materials"). In the event City brings Hazardous Materials onto the Licensed Property (with or without permission of Xcel), City shall comply with all applicable laws, ordinances, and regulations of federal, state, and local government agencies related to such Hazardous Materials. City shall remove such Hazardous Materials from the Licensed Property immediately upon request of Xcel. City shall bear all costs related to environmental

investigation, clean-up, removal, or restoration of any water, air, groundwater, natural resources, soil, or land, including, but not limited to the Licensed Property, arising out of the acts or omissions of City, its employees, agents, contractors, subcontractors, invitees, suppliers, and other persons. City will immediately advise Xcel in writing of any of the following: (a) any pending or threatened environmental Claims (as hereafter defined) against City and/or City's employees, agents, contractors, subcontractors, invitees, suppliers, and other persons relating to the Site; (b) any condition or occurrence on the Licensed Property that (i) results in noncompliance by City and/or City's employees, agents, contractors, subcontractors, invitees, suppliers and other persons with any applicable Hazardous Materials Laws, or (ii) could reasonably be anticipated to form the basis of an environmental Claim against City, City's employees, agents, contractors, subcontractors, invitees, suppliers and other persons, or Xcel or the Licensed Property; (c) any condition or occurrence on the Licensed Property or any property adjoining the Licensed Property that could reasonably be anticipated to cause transferability of the Premises under any Hazardous Materials Laws; and/or (d) the actual or anticipated taking of any removal or remedial action by City in response to the actual or alleged presence of any Hazardous Material on the Licensed Property. All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or removal or remedial action and City's response thereto. In addition, City will provide Xcel with copies of all communications regarding the Licensed Property with any governmental agency relating to Hazardous Materials laws, all such communications with any person relating to environmental Claims, and such detailed reports of any such environmental Claim as may reasonably be requested by Xcel.

Hazardous Materials Laws means any federal, state, or local laws (including common law), regulations, ordinances, orders or decrees of any applicable authority relating to, or claiming jurisdiction over the Site in question, concerning protection or preservation of human health, the environment or natural resources including, without limitation, the Toxic Substances Control Act (15 U.S.C. § 2601, et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (42 U.S.C. § 9601, et seq.) ("CERCLA"), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), the Hazardous Material Transportation Act, (49 U.S.C. § 5101, et seq.), the Federal Water Pollution Control Act, (33 U.S.C. § 1251, et seq.), the Clean Air Act, (42 U.S.C. § 7401, et seq.), the Low-Level Radioactive Waste Policy Act, 42 U.S.C. 2021b et seq., and applicable state counterparts, and their implementing regulations, all as amended from time-to-time, as well as any other such authorities relating to (i) any spill, discharge, release or emission to the environment (including, but not limited to, air, surface water, groundwater, sand, soils, sediment); (ii) the quality of any environmental medium; (iii) the generation, treatment, recycling, storage, disposal, transportation or other handling or management of Hazardous Materials; (iv) the contamination or pollution of any environmental medium; or (v) responsibility for environmental conditions or activities affecting the environment.

10. Costs. City shall timely pay all fees, taxes, wages, salaries and other charges and expenses in any manner associated with this Agreement.

11. Security. City shall provide all security necessary pursuant to this Agreement, including that necessary for City's vehicles, improvements, machinery, equipment, sets, facilities and supplies and Xcel shall have no liability for any injury, loss or damage arising out of City's failure to properly provide such security. City shall provide all security necessary pursuant to this License, to protect Xcel's personal and real property.

12. Partnership or Joint Venture. Nothing in this Agreement shall be interpreted or construed as a partnership or joint venture between Xcel and City concerning City's operations on the Licensed Property.

13. Indemnification and Release.

(a) (i) As used in this License, the term "Claims" means (1) losses, liabilities, and expenses of any sort, including attorneys' fees; (2) fines and penalties; (3) environmental costs, including, but not limited to, investigation, removal, remedial, and restoration costs, and consultant and other fees and expenses; and (4) any and all other costs or expenses.

(ii) As used in this License, the term "Injury" means (1) death, personal injury, or property damage; (2) the exacerbation of or exposure to any pre-existing (as of the effective date of this Agreement) Hazardous Materials already present or exacerbation or exposure to any pre-existing environmental or natural resource impairment or damage; (3) the introduction of Hazardous Materials or any new environmental or natural resource impairment or damage to the Site that is not pre-existing on the effective date of this Agreement; (4) loss of profits or other economic injury; (5) disease or actual or threatened health effect; and (6) any consequential or other damages.

(b) City covenants and agrees to at all times protect, indemnify, hold harmless, release, and defend the Xcel, its directors, officers, agents, employees, successors, assigns, parents, subsidiaries, and affiliates from and against any and all Claims arising from, alleged to arise from, or related to any Injury allegedly or actually occurring, imposed as a result of, arising from, or related to (1) this Agreement; (2) the construction, existence, maintenance, operation, repair, inspection, removal, replacement, or relocation of the electric power generation, transmission, or distribution; natural gas gathering, storage, transmission, or distribution; or any other utility facilities located on the Site; or (3) the City's or any other person's presence at the Site as a result of or related to this License.

(c) The City's duty to protect, indemnify, hold harmless, and defend hereunder shall apply to any and all Claims and Injury, including, but not limited to:

(i) Claims asserted by any person or entity, including, but not limited to, employees of the City or its contractors, subcontractors, or their employees;

(ii) Claims arising from, or alleged to be arising in any way from, the existence at or near the Property of (1) electric power generation, transmission, distribution, or related facilities; (2) electricity or electromagnetic fields; (3)

natural gas gathering, storage, transmission, distribution, or related facilities; (4) asbestos or asbestos containing materials; (5) any Hazardous Materials, regardless of origin; or

(iii) Claims arising from, or alleged to be arising in any way from, the acts or omissions of the City, its invitees, employees, agents, contractors, invitees and other persons.

(d) Limitation of Indemnification Liability. Under no circumstances will City be required to pay any amounts in excess of the limits on liability established in Minnesota Statutes § 466.04, without regard to any exceptions set forth in Minnesota Statutes § 466.03.

14. Covenant Not to Sue. City, for itself and its representatives, successors, and assigns, does hereby covenant and agree not to sue or bring any action (whether legal or not) against Xcel for injuries sustained to City's person and property or the person and property of City's employees, agents, independent contractors, subcontractors, invitees, suppliers, representatives, customers or members of the public due to or in anywise growing out of or connected directly or indirectly with City's stated and associated activities and presence in and about the Licensed Property except due to Xcel's gross negligence or willful misconduct.

15. City's Sole Risk and Expense. City agrees that use of the Licensed Property by the City hereunder, or its employees, agents, contractors, subcontractors, invitees, suppliers and other persons and members of the public, shall be at the sole risk and expense of City.

16. Services. The Licensed Property, including any improvements thereon, is "as is." Any service requested by the City to or on the Licensed Property shall be at the sole expense of the City and must be approved by Xcel in advance.

17. Distance and Height Requirements. The City shall construct and use the Site so as to maintain the maximum distance between the Permitted Use and the Xcel's electric and natural gas facilities, or other facilities located on the Licensed Property, allowable by the height, width and terrain of the Licensed Property. If the Permitted Use crosses over or under the Xcel's electric, or natural gas facilities the crossing shall be as directed by the Xcel. Notwithstanding the foregoing, minimum vertical and horizontal separations, as directed by the Xcel, shall be maintained on all crossings and parallel encroachments.

18. Removal and Relocation. The City shall remove at its own expense, the Permitted Use from the Licensed Property, or any part thereof, or relocate the same to a different location on the Licensed Property as requested by the Xcel, if the Permitted Use should interfere in the Xcel's sole and absolute discretion, with the operation and maintenance of the Xcel's facilities as now or hereafter constructed. In the event that the City's use of the Licensed Property should, in the reasonable judgment of the Xcel, constitute a hazard to the Xcel's facilities or the general public, the Xcel may require immediate removal, relocation, or modification of the Permitted Use to eliminate such interference or hazard, and may suspend the City's right to use the Licensed Property under this Agreement until such removal, relocation, or modification is completed.

19. Disclaimer of Warranty. Xcel makes no representation as to the suitability of the Licensed Property for the Permitted Use and no such representation, or any other representations, are made by Xcel or shall be implied by operation of law or otherwise. Additionally, Xcel shall have no responsibility or liability, of any kind, type, nature or description on account of the failure, cessation or termination of electric service to the Licensed Property; on account of inadequate or improper functioning of the equipment of City; on account of any interference, regardless of source, with the exception of interference caused by any of Xcel's equipment that is not operating within its own specific license parameters, with signals transmitted from the equipment of City, of any kind, type, nature or description, including by way of illustration but not limitation, loss or damage due to fire, water, windstorm, hail, lightning, earthquake, riot, vandalism, theft, acts of contractors, acts of agents or employees or others utilizing the Licensed Property, or for any other cause. Further, the Xcel shall have no liability or responsibility of any kind, nature or description for maintenance, repair, restoration or renovation of the equipment of the City.

20. Assignment. City shall not assign, sell, delegate, subcontract or otherwise transfer or encumber in any manner whatsoever, all or any portion of the rights, duties or obligations under this Agreement. Any such transfer or encumbrance shall be null and void and shall permit Xcel to terminate this Agreement immediately without written notice.

21. Xcel's Reserved Rights. Xcel reserves the right, at any time and from time to time, to make such use of the Licensed Property as it may desire, at its sole discretion and for any purpose, including, but not limited to, the construction, operation or maintenance of its electric power generation, transmission or distribution and appurtenant facilities located or to be located on the Licensed Property. City will ensure that Xcel has unimpeded access to any and all facilities located on the Licensed Property. In the exercise by Xcel of all of the foregoing rights, Xcel will use its best efforts not to materially interfere with the Permitted Use. However, Xcel shall not in any event be liable for inconvenience, annoyance, disturbance or other damage to City, or the Permitted Use, by reason of the exercise of the foregoing rights or any other rights of Xcel to enter into or use the Licensed Property, and the obligations of City under this License shall not be affected in any manner.

22. Encumbrances. City shall keep the Licensed Property free and clear of any and all liens and encumbrances arising or which might arise, for any reason, out of City's occupancy and use of the Licensed Property by anyone in connection with the Permitted Use.

23. Entire Agreement. This Agreement and Exhibit attached hereto and by this reference incorporated herein, constitute the full and complete understanding of the parties regarding the subject matter hereof. This Agreement shall supersede and replace all prior or contemporaneous oral or written agreements, correspondence or understandings. Any modification or amendment of this Agreement must be made in writing and executed by both parties hereto.

24. Amendment. This Agreement may be amended only by a written amendment signed by both parties.

25. Licensed Interest Only. This License does not convey an interest in real property.

26. Non-Transferable Right. This License shall not pass with title to City's personal property or improvements and shall not run with the property.

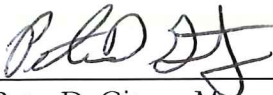
27. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the state of Minnesota.

28. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

29. Binding Effect. All the terms, conditions and covenants of this Agreement shall be binding and shall inure to the benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the dates indicated below:

NORTHERN STATES POWER COMPANY,
a Minnesota corporation

By: 
Peter D. Gitzen, Manager
Siting & Land Rights
Xcel Energy Services Inc.
an Authorized Agent for Northern States Power Company,
a Minnesota corporation

Agreed to and accepted by the City this ____ day of ____, 2017.

CITY OF SHAKOPEE
a municipal corporation

By: _____
Its Mayor

By: _____
Its ~~Acting~~ City Administrator

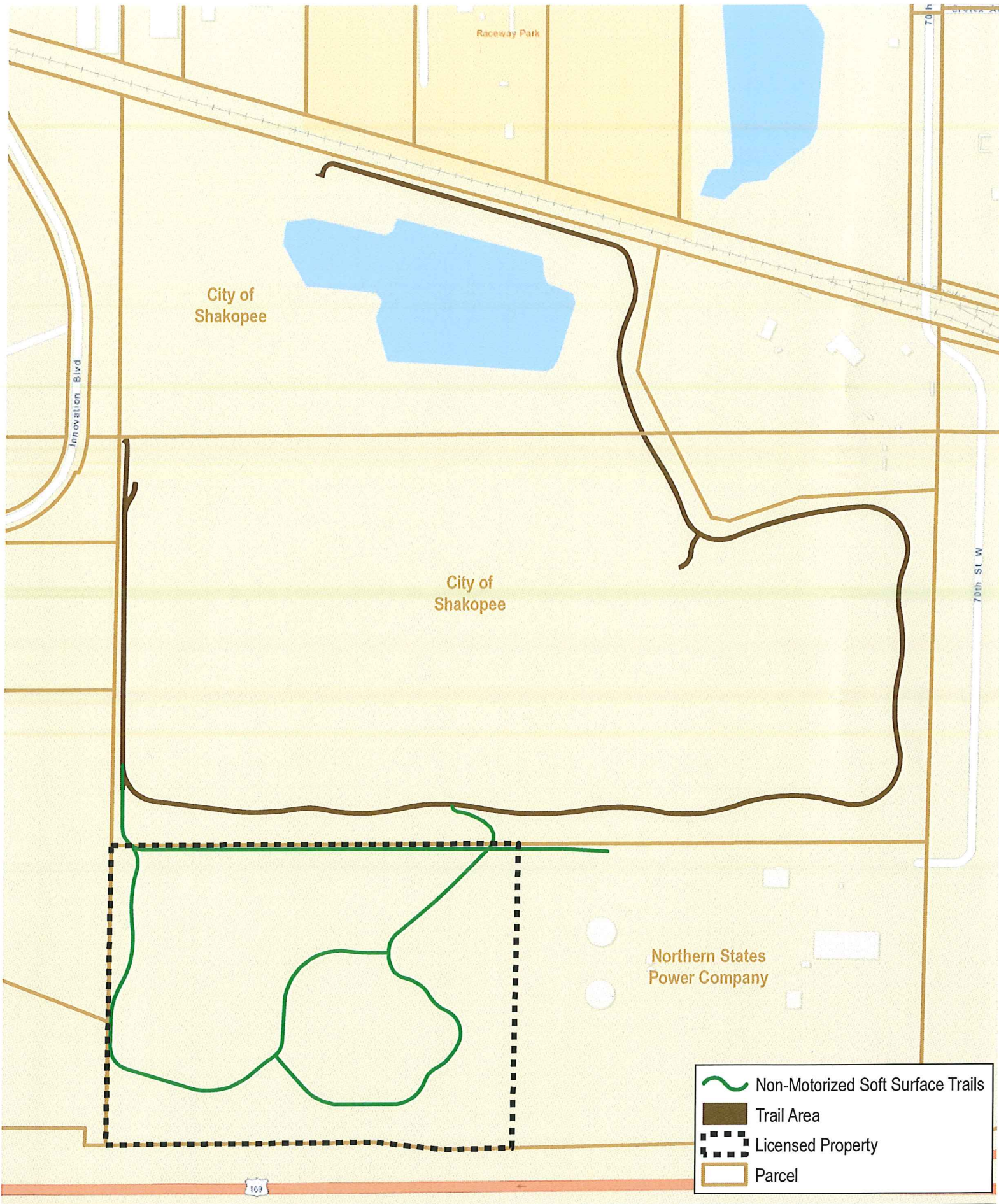


EXHIBIT B

