

This Agreement is entered into the ____ day of June, 2011, between the City of Saint Paul, a municipal corporation under the laws of the State of Minnesota ("City") and Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy ("Xcel Energy").

WHEREAS, the City, through its Department of Parks and Recreation_Forestry unit, has a mandate to preserve and protect the public urban forest on behalf of the citizens of Saint Paul; and

WHEREAS, the City, through its Department of Parks and Recreation Natural Resources Manager, is responsible for the planting, care, protection, preservation, trimming, and removal of trees on city owned property; and

WHEREAS, Xcel Energy has an obligation to construct and maintain transmission and distribution facilities necessary to deliver electricity to all of its customers; and

WHEREAS, and the City has been performing vegetation management of Xcel Energy transmission and distribution facilities, in addition to its responsibilities for city owned property; and

WHEREAS, both parties recognize the value in an efficient transfer from the City to Xcel Energy of vegetation management responsibility for Xcel Energy facilities; and

WHEREAS, the City and Xcel Energy have agreed that it is in the best interest of both parties to work together to acknowledge and transfer the authority to trim trees adjacent to Xcel Energy facilities.

Now, therefore, based upon the mutual promises and covenants set forth herein, parties agree as follows:

1. Scope of Agreement: The City and Xcel Energy agree to establish an "Urban Forest Safety & Service Reliability Enhancement Plan" to create a process by which responsibility for the vegetation management of all primary conductor lines intersecting city-owned trees is transferred to Xcel Energy and its subcontractors. Vegetation management of all primary conductor lines intersecting city-owned trees will be done by Xcel Energy under mutual agreement between the City and Xcel Energy and in accordance with Xcel Energy's then-current Vegetation Management Guidelines, a copy of which are attached hereto and incorporated herein as Exhibit A. Exhibit A shall be updated by notification from Xcel Energy to City each time that the Vegetation Management Guidelines are materially changed.
2. Term of Agreement: This Agreement shall be effective as of June 23, 2011 and shall continue in effect until August 31, 2026.
3. Payment: Xcel Energy shall pay to City the amounts indicated in the following fee schedule on March 1 of each of the first three (3) years of this Agreement for a total payment to City of \$500,000, and shall make no further payment to City pursuant to this Agreement.

July 1, 2011	\$220,000
March 1, 2012	\$170,000
March 1, 2013	\$110,000
<hr/> Total	<hr/> \$500,000

4. Xcel Duties, Exceptions and Restrictions:

- a. During the term of this Agreement, Xcel Energy will be responsible for pruning and trimming the publicly owned tree branches and limbs within ten (10) feet of distribution electrical conductors that affect the operation and maintenance of its distribution electrical facilities (the "Utility Vegetation Management Zone").
- b. Xcel Energy shall not remove any tree limb greater than ten (10) inches in diameter without first informing the City and receiving approval to proceed.
- c. Xcel Energy shall not use any chemical controls or tree growth regulators on public owned trees without express written approval from the City, which approval shall not be unreasonably withheld. Further, any approved use of chemical controls by Xcel Energy must be done in accordance with all City ordinances regarding such notification and application.
- d. Xcel Energy shall use commercially reasonable efforts to remove all tree brush and debris associated with routine maintenance activities promptly to assure safe passage for all users of the right-of-way within 24 hours but in no event later than three (3) business days after such routine maintenance activities. Brush and debris shall not obstruct safe passage along any public rights-of-way, streets, sidewalks, alleys, or private property prior to its removal.
- e. Xcel Energy and/or its subcontractors shall work with the City to mutually address allegations of irreparable damage to publicly owned trees made by the City's Natural Resource Manager as a direct result of Xcel Energy's routine maintenance activities. If determined by the City's Natural Resource Manager to be the fault of Xcel Energy or its contractor, Xcel Energy shall be responsible for the cost of replacement of the tree(s).
- f. Xcel Energy will not prune publicly owned honey locust or oak trees during periods or conditions of high risk of associated destructive insect or pathogen transmission, except if the tree poses an immediate risk of danger, as determined by Xcel Energy. These periods of high risk will be determined by arboriculture best management practices for Zone 4.
- g. In the event of an emergency storm event situation, Xcel Energy shall be reasonably available to perform emergency response tree work to mitigate electrical hazards that have arisen from said storm event. Brush and debris left by Xcel Energy under this section must not obstruct safe passage along any public right-of-way, streets, sidewalks, alleys, or private property.

h. During each year, Xcel Energy will notify the City of planned work timelines and updated contact information for each of the planned work circuits, and shall notify the City of any known escalated concerns about publicly owned trees in advance of work beginning, but no less than forty-eight (48) business hours prior to commencing routine maintenance activities.

i. If Xcel Energy hires new or additional vegetation management subcontractors to perform any work under this Agreement, Xcel Energy will notify City and request a meeting to include all new subcontractors, Xcel Energy and the City prior to performance of work by the new subcontractor.

j. Xcel Energy will post on its vegetation management vehicles contact information, including a telephone number. The City and Xcel Energy will designate a representative to handle citizen complaints about work done on trees on City property.

k. Except in cases of emergency, Xcel Energy shall consult with City a minimum of five days prior to doing any maintenance of trees on parkland.

l. Xcel Energy will obtain necessary street obstruction permits and post streets “no parking” at least one day prior to doing any routine maintenance work.

m. Xcel Energy will be responsible for all work, materials (e.g. cones and barricades) , and expenses related to any street closures or detours required or deemed necessary by Public Works.

n. The City retains the authority to temporarily suspend Xcel Energy trimming activities at any time during the process when it is deemed by the Natural Resource Manager or his/her representative to be in the best interest of the City. If such authority is exercised, the City and Xcel Energy will discuss the situation and reach a resolution before work is resumed.

5. City Duties, Exceptions and Restrictions.

a. If a tree in the Utility Vegetation Management Zone is to be removed in accordance with municipal urban forestry maintenance strategies, the City shall be responsible for the removal. Xcel Energy will upon request assist City with mitigation of electrical hazards associated with such a removal.

b. Debris left by Xcel Energy during an emergency response situation shall be the responsibility of the tree owner.

c. The City may replace or supplement Xcel Energy’s emergency tree work on public land. Any such work done by the City shall be performed at City’s expense.

6. Records/Reports.

a. Routine maintenance shall be in accordance with an annual schedule of operations (“Book of Work”) which Xcel Energy shall provide to the City for its review prior to beginning any of the work contemplated by the Agreement.

b. Xcel Energy understands that all data created, collected, received, stored, used, maintained, or disseminated under this Agreement, if any, is subject to the requirements of the Minnesota Government Data Practices Act.

c. The City and Xcel Energy, including Xcel Energy's contractor representatives, will meet annually to review Xcel Energy's Book of Work for the coming year, the current proposed five (5) year projected work plan, and, if applicable, updated versions of Xcel Energy's Vegetation Management Guidelines.

d. Xcel Energy will maintain complete annual records of all citizen complaints made to Xcel Energy regarding its work under this Agreement. Records shall be kept for a minimum of three (3) years, and a summary shall be available to the City upon request. Said summary shall not include confidential customer information or other private data.

e. Xcel Energy will maintain accurate and complete annual records of all vegetation management work done, by area, where public trees were maintained within the Utility Vegetation Management Zone under this Agreement and shall provide non-confidential portions of those to the City, if requested by the City, by March 1 of the following year if routine maintenance vegetation management activities were performed during the previous calendar year.

7. Contract Administrators.

CITY

XCEL ENERGY

Cy Kosel
Natural Resources Manager
1100 Hamline Avenue N.
Saint Paul, MN 55108

Supervisor, Vegetation Management
3115 Centre Pointe Drive
Roseville, MN 55113

8. Compliance With Applicable Law.

City and Xcel Energy shall comply with all federal, state, and local laws or ordinances which relate to performance of the provisions of this Agreement. Xcel shall apply for, pay for, and obtain all permits and/or licenses required to perform hereunder.

9. Non-discrimination.

Xcel will not discriminate against any employee or applicant for employment for work under this Agreement because of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to the same. This provision shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising, layoff or termination; rates of pay or their forms of compensation; and selection for training, including apprenticeship.

10. Xcel Energy shall carry insurance of the kind and in the amounts shown below for the life of the contract. Insurance certificates should state that the City of Saint Paul, its employees and officials are Additional Insureds. A cross suits endorsement shall be provided to the benefit of the City.

I. Public Liability Insurance

- a) Bodily Injury \$1,500,000 each occurrence
 \$2,000,000 aggregate

- b) Property Damage \$1,500,000 each accident
 \$2,000,000 aggregate
- c) Policy must include an "all services, products, or completed transactions" endorsement.

II. Automobile Insurance

- a) Bodily Injury \$ 750,000 per person
 \$1,000,000 per accident

- b) Property damage not less than \$50,000 per accident

III. Worker's Compensation and Employer's Liability

- a) Worker's Compensation per Minnesota Statute
- b) Employer's Liability shall have minimum limits of \$500,000 per accident; \$500,000 per employee; \$500,000 per disease policy limit.

IV. General Insurance Requirements

- a) The policy is to be written on an occurrence basis or as acceptable to the City. Certificate of insurance must indicate if the policy is issued on a claims-made or occurrence basis. Agent must state on the certificate if policy includes errors and omissions coverage.

- b) Satisfaction of policy and endorsement requirements for General Liability and Auto Insurance, of "each occurrence" and "aggregate" limits, can be met with an umbrella or excess policy with the same minimum monetary limits written on an occurrence basis, providing it is written by the same insurance carrier

11. Subcontracting. Xcel Energy will be responsible for ensuring that all subcontractors performing any of the work contemplated under this Agreement are bound by the responsibilities of Xcel Energy outlined herein.

12. Hold Harmless. Each party shall be responsible for its own acts and omissions in carrying out the terms of this Agreement.

13. Assignment. The City and Xcel Energy each binds itself and its successors, legal representatives, and assigns of such other party, with respect to all covenants of this Agreement; and neither the City nor Xcel Energy will assign or transfer their interest in this Agreement without the written consent of the other, which consent shall not be unreasonably withheld.

14. Dispute Resolution, Termination.

a. Subject to the mediation requirement set forth below, the City reserves the right to terminate this Agreement if Xcel Energy violates any of the terms or does not fulfill, in a timely and proper manner, its obligations under this Agreement as reasonably determined by the City. If the City asserts that Xcel Energy is in default in the performance of any obligation hereunder, the City shall notify Xcel Energy in writing of the default and the desired remedy. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the parties are unable to negotiate a resolution of the dispute within thirty days of the date of written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. The City shall not terminate this Agreement or commence action in District Court unless the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, except that the right to such mediation may be waived by Xcel Energy. In the event City elects to terminate this Agreement during the Initial Term, City shall, within 30 days of City's notice to terminate, refund to Xcel Energy amounts according to the following schedule:

For termination on or before March 1, 2012	\$220,000
For termination between March 2, 2012 and March 1, 2013	\$390,000
For termination between March 2, 2013 and March 1, 2014	\$500,000

b. Xcel Energy may terminate this Agreement at any time by giving sixty days written notice of intent to terminate.

15. Amendments. Any amendments or alterations to this Agreement must be in writing and duly executed by both parties.

16. Notices.

Except as otherwise stated in this Agreement, any notice or demand to be given under this Agreement shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications shall be addressed as follows:

To City:
Michael Hahm
Director of Parks & Recreation
15 Fourth Street W.

To Xcel Energy:
Supervisor, Vegetation Management
3115 Centre Pointe Drive
Roseville, MN 55113

Saint Paul, Minnesota 55102

With A Copy To:
General Counsel
414 Nicollet Mall, 5th Floor
Minneapolis, MN 55414

17. Interpretation of Agreement, Venue.

This Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation related to this Agreement shall be venued in the District Court of the County of Ramsey, Second Judicial District, State of Minnesota.

18. Entire Agreement. It is understood and agreed that this entire Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matters herein.

IN WITNESS WHEREOF, the parties hereto are authorized signatories and have executed this Agreement, the day and year first above written.

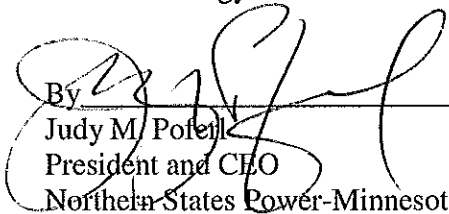
For the City of Saint Paul:

Mayors Office

Director, Parks and Recreation

Director, Office of Financial Services

For Xcel Energy:

By 

Judy M. Pofejl
President and CEO
Northern States Power-Minnesota

Approved as to form:

Assistant City Attorney

