

AGREEMENT
between the
BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL
and
Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy

THIS AGREEMENT, is made and entered into this ____ day of _____, 2015, by and between the **BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL**, a municipal corporation under the laws of the State of Minnesota (the “Board”), and **NORTHERN STATES POWER COMPANY, a Minnesota corporation, d/b/a. Xcel Energy (“NSP”)**.

WITNESSETH:

WHEREAS, NSP intends to replace certain natural gas facilities located under

- Saint Albans Street South, from Grand Avenue to Sherburne Avenue
- Sherburne Avenue, from Saint Albans Street South to Capitol Boulevard; and

WHEREAS, the Board desires to take the opportunity to coordinate water main construction with NSP gas main construction, recognizing that doing so would provide cost savings and a lesser impact on residents than if the projects were performed separately; and

WHEREAS, NSP and Board recognize that the location of the water pipes, which are underneath the gas pipes, will mean that work done by NSP in that particular area could negatively impact the existing water pipes; and

WHEREAS, NSP has agreed that it would be responsible for the costs of all excavation and repaving that it would be doing for its portion of the project, and the Board would save money by not doing separate excavation and repaving at a later date, and would not have to disturb the gas pipes at a later date.

NOW, THEREFORE, the Board and NSP, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, agree as follows:

Section 1. Scope of Services. NSP agrees to provide construction, administrative, billing and inspection services in accordance with this Agreement and with respect to the following:

A. NSP shall provide the Board with Construction Services performed by its Contractor in accordance with the following, attached hereto and incorporated herein by reference:

- St. Paul Regional Water Services, General Conditions, dated October 2014 (as amended).
- Special Provisions, Water System Specification, and St. Paul Standard Plates.
- Standards for the Installation of Water Mains, latest edition.
- Construction Plans, dated September 30, 2014 (collectively “Construction Services”)

B. NSP shall enter into an agreement with its Contractor whereby Contractor provides the Construction Services and NSP shall administer payments for the Board to the Contractor for the provision of Construction Services, including review and processing of invoices from Contractor, collection of payment on such invoices from the Board, and payments to the Contractor.

C. NSP or its consultant(s) shall provide testing and inspection services in accordance with the scope for testing and inspection attached hereto and made a part of herein.

D. In the event this Agreement is determined to be unlawful in whole or in part, the parties agree to work together, if possible, to complete scheduled work and promptly facilitate replacement arrangements for the Board.

Section 2. Term of Agreement.

A. The services rendered by NSP and its Contractor shall be commenced upon execution of the Agreement and shall be performed on a timetable agreed upon by the parties, but completion shall be no later than September 30, 2015.

B. Neither NSP nor its Contractor shall proceed with any task necessary for performance of work under this Agreement without specific advance authorization from the Board's Project Manager, as identified in *Section 5. Principal Project Managers* of this Agreement.

C. In the event that there are delays caused by actions of the Board or which may be reasonably requested by NSP which can change the completion date, NSP shall request an extension of time for completion of the project. The Project Manager will review the request and shall grant to NSP such extensions of time as may be reasonable.

D. This Agreement shall expire on December 31, 2015, or upon completion of the project, whichever is later.

Section 3. Changes in Scope of Services. Board and NSP may mutually agree to changes that would increase, decrease, or otherwise modify the Construction Services. Increases in scope and/or corresponding changes in compensation must be requested and authorized in writing and in advance by the Board, as well as by NSP.

Section 4. Delays. NSP may request an extension of the Construction Services completion date if the Board's actions or inactions have created a substantial delay, or if such a request is reasonable under the circumstances. Such a request must be made in writing in advance by NSP, and it will not be granted without the written approval of Saint Paul Regional Water Services General Manager ("SPRWS General Manager"), who may grant such extensions as may be reasonable.

Section 5. Principal Project Managers. NSP agrees to assign Tony Wendland as its principal project manager ("Principal Project Manager"). This individual will coordinate Contractor's activities with the Board under the terms of the Agreement. NSP agrees that it shall not remove its Principal Project Manager without the prior written approval of SPRWS General Manager which approval shall not be unreasonably withheld.

The Board agrees to assign Richard Hibbard, as its principal project manager ("Board's Project Manager") for this Agreement, and the individual to whom all communications pertaining to this Agreement shall be addressed. This individual will coordinate and manage the project on behalf of the Board, answer questions in the day-to-day performance of this Agreement, and have the authority to transmit instructions, receive information, and interpret and define the Board's policy and decisions pertinent to this Agreement.

Section 6. Termination. This Agreement will continue in full force and effect until completion of the project as described herein, unless otherwise terminated at an earlier date by either party pursuant to the terms contained herein. Either party may terminate this Agreement at will by giving no less than thirty (30) days written notice of the intent to terminate to the other party.

In the event of such termination, the Board will pay NSP for all services actually, timely, and faithfully rendered up to NSP's receipt of Board's notice of termination. NSP agrees that in the event of such termination, and upon the request of the Board, NSP will provide to the Board all books, documents, papers, account records, and other evidences pertaining to work performed under this Agreement, prior to the Board rendering final payment for service.

Board's right to terminate following bid opening. The Board shall have the right to terminate this Agreement within 30 days of bid opening if it determines, in its sole discretion, that the bids for the Construction Services are too high or in the event that the Board finds it necessary to not fund the project. The Board shall provide notice of termination in writing.

In the event of such termination by the Board, the Board shall pay NSP its actual costs associated with the Scope of Work performed by NSP prior to bid opening. The Board shall have no additional cost obligations beyond those actual costs.

Section 7. Billings and Payment. The Board hereby agrees to compensate Contractor through its billing administrator NSP for Construction Services based upon the unit prices provided in the Bid Form.

The Board assumes that these payments and expense reimbursements shall fully reimburse NSP and Contractor for all costs, including those considered by the Board to be incidental to the performance of the described tasks. The total costs paid by the Board under this Agreement shall not exceed the total sum of the itemized prices provided by the Contractor in the Bid Form, except as provided in *Section 3. Changes in Scope of Services* of this Agreement. The total construction cost billable to the Board is estimated to be \$1.7 million.

NSP shall forward Contractor's itemized invoices to Board for payment. Upon receipt of the invoice and verification of the charges, payment shall be made by the Board to NSP within thirty (30) days. NSP shall thereupon promptly forward such payments to Contractor.

In the event Contractor fails to comply with any terms or conditions of the Agreement or to provide in any manner the work or services as agreed to herein, the Board reserves the right to withhold part or full payment until the Board is satisfied in its sole discretion that corrective action has been taken or completed. This option is in addition to and not in lieu of the Board's right to termination as provided in other sections of this Agreement.

The Board agrees to reimburse NSP for the costs of construction administration, billing, testing, and inspection not to exceed 10% of the total construction cost billable to the Board. This is estimated to be \$170,000. This amount combined with the total construction cost results in an estimated total cost billable to the Board of \$1,870,000.

Section 8. Work Products, Records, Dissemination of Information.

A. In the event that deliverable work products include drawings, NSP shall provide a complete set of as-built record drawings in AutoCAD or ESRI GIS format (plan view only in GIS), as may be determined appropriate by Board's Project Manager. AutoCAD drawings shall include any customized Plot Style Tables (.ctb or .stb) or line types (.lin) and shall not require links to other drawings or external references. Whether required as an incidental or specifically addressed in the Proposal, final payment to NSP for work will not be approved until as-built record drawings are received and approved by Board's Project Manager.

B. NSP agrees not to release, transmit, or otherwise disseminate information associated with or generated as a result of the work performed under this Agreement without prior knowledge and written consent of the Board.

C. NSP agrees to maintain all business records in such a manner as will readily conform to the terms of this Agreement and to make such materials available at its office at all reasonable times during this Agreement period and for six (6) years from the date of the final payment under the Agreement for audit or inspection by the Board, the Auditor of the State of Minnesota, or other duly authorized representative.

D. NSP agrees to abide strictly by Chapter 13, Minnesota Government Data Practices Act, and in particular Minn. Stat. §13.05, subd. 6 and 11; and §13.37, subd. 1 (b) and Minn. Stat §138.17 and §15.17. All of the data created, collected, received, stored, used, maintained, or disseminated by NSP in performing functions under this Agreement is subject to the requirements of the Minnesota Government Data Practices Act and NSP must comply with those requirements as if it were a governmental entity. The remedies in Minn. Stat. §13.08 apply to NSP. If any provision of this Agreement is in conflict with the Minnesota Government Data Practices Act or other Minnesota state laws, state law shall control.

E. The Board holds NSP harmless from any misuse or unauthorized reuse of project deliverables once transfer of ownership is complete.

Section 9. Equal Opportunity Employment. NSP agrees, and shall ensure that its Contractor agrees, that they will not discriminate against any employee or applicant for employment for work under this Agreement because of race, creed, color, religion, sex, sexual or affectional orientation, age, disability, marital status, status with regard to public assistance, national origin, or ancestry and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to 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.

Section 10. Conflict of Interest. NSP agrees that it will not contract for or accept employment for the performance of any work or services with any individual, business, corporation, government unit or any other party that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the Board.

Section 11. Assignment. The Board and NSP both agree to bind itself and its Contractors, successors, legal representatives, and assigns of such other party, with respect to all covenants of this Agreement; and neither the Board nor NSP may assign or transfer their interest in this Agreement without the written consent of the other.

Section 12. Independent Contractor. It is agreed by the parties that, at all times and for all purposes within the scope of the Agreement, the relationship of NSP to the Board and the City of Saint Paul is that of independent contractor and not that of employee. No statement contained in this Agreement shall be construed so as to find NSP an employee of the Board or the City of Saint Paul, and NSP shall be entitled to none of the rights, privileges, or benefits of City of Saint Paul or Board employees.

Section 13. Hold Harmless. NSP shall cause its Contractor to indemnify, save, hold harmless, protect, and defend the Board, its officers, agents and employees, as well as the City of Saint Paul, its officers, agents and employees, from all claims, actions or suits of any character brought for or on account of any claimed or alleged injuries or damages received by any person or property, including the Board or the City of Saint Paul, resulting from any act or omission by any person employed by NSP in carrying out the terms of the Agreement. NSP shall be responsible to the level of competency presently maintained by other practicing professionals performing the same or similar type of work at the time the notice to proceed is issued.

Section 14. Insurance. NSP shall be required to carry insurance of the kind and in the amounts shown below for the life of the Agreement. Insurance certificates for General Liability and Automobile shall provide that the City of Saint Paul and the Board of Water Commissioners of the City of Saint Paul, and their officials, employees, agents and representatives are Additional Insureds. A cross suits endorsement shall be provided to the benefit of the Board.

1. General or Business 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 operations" endorsement.

2. Automobile Insurance
 - a. When commercial vehicles are used:
 - 1) Bodily Injury \$ 750,000 per person
 \$1,000,000 per accident
 - 2) Property Damage not less than \$50,000 per accident
Coverage shall include: hired, non-owned and owned auto
 - b. When personal vehicles are used:
It is not required that the Board and City be named as Additional Insured, but proof of insurance is required prior to commencement of activities.
 - 1) Bodily Injury \$30,000 per person
 \$60,000 per accident
 - 2) Property Damage \$20,000 per accident
 - c. When rental vehicles are used:
NSP shall either purchase insurance from the rental agency, or provide Board with proof of insurance as stated above.
3. Worker's Compensation and Employer's Liability
 - a. Worker's Compensation per Minnesota Statutes
 - b. Employer's Liability shall have minimum limits of \$500,000 per accident; \$500,000 per employee; \$500,000 per disease policy limit.
4. Professional Liability Insurance
 - a. \$1,000,000 per occurrence
 - b. \$2,000,000 aggregate
5. General Insurance Requirements
 - a. The policy is to be written on an occurrence basis (except for Professional Liability insurance) or as acceptable to the Board. Certificate of insurance must indicate if the policy is issued on a claims-made or occurrence basis. Agent must state on the certificate if company carries errors and omissions coverage.
 - b. NSP shall not commence work until a Certificate of Insurance covering all of the insurance required for this project is approved and the Project Manager has issued a notice to proceed. Insurance must remain in place for the duration of the original Agreement and any extension periods.
 - c. The Board and the City reserve the right to review NSP's insurance policies at any time to verify that City requirements have been met.
 - d. Nothing shall preclude the Board or the City from requiring NSP to purchase and provide evidence of additional insurance if the scope of services changes, if the amount of the Agreement is significantly increased, or if the exposure to the Board, or to the City and its citizens, is deemed to have increased.

- e. 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.

Section 15. Services not Provided for. No claim for services provided by NSP not specifically provided for in this Agreement shall be honored or paid by the Board.

Section 16. 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 hereof.

Section 17. Requirement of a Writing. Any alternations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by the parties’ authorized representatives.

Section 18. Amendment of Agreement. This Agreement may be amended or terminated by written agreement of the parties, pursuant to the terms and conditions contained herein.

Section 19. Authority. The individuals signing and executing this Agreement on behalf of NSP and the Board warrant that they have the requisite corporate power and authority to enter into and perform this Agreement on behalf of their respective parties.

Section 20. Interpretation of Agreement, Venue. This Agreement has been made under the laws and legal authorities of the State of Minnesota, and such laws and authorities shall control its interpretation. Any legal action arising under this Agreement may only be brought in the District Court of Ramsey County, Minnesota.

Section 21. Notice. Any notice required or permitted to be given by any party is deemed received by the other party when placed into United States Mail, postage prepaid, as follows:

If to NSP:
Tony Wendland
Xcel Energy
825 Rice Street
St. Paul, MN 55117

If to Board:
Rich Hibbard
Saint Paul Regional Water Services
1900 Rice Street
St. Paul, MN 55113

Section 22. Waiver. Any fault of a party to assert any right under this Agreement shall not constitute a waiver or a termination of that right, this Agreement, or any of this Agreement’s provisions.

Section 23. Survival of Obligations.

- A. The respective obligations of the Board and NSP under these terms and conditions, which by their nature would continue beyond the termination, cancellation, or expiration hereof, shall survive termination, cancellation or expiration hereof.

- B. If a court or governmental agency with proper jurisdiction determines that this Agreement, or a provision herein is unlawful, this Agreement or that provision shall terminate. If a provision is so terminated, but the parties legally, commercially, and practicably can continue this Agreement without the terminated provision, the remainder of this Agreement shall continue in effect.

Section 24. Force Majeure. Neither the Board nor NSP shall be held responsible for performance if its performance is prevented by acts or events beyond the party's reasonable control, including, but not limited to: severe weather and storms, earthquake or other natural occurrences, strikes and other labor unrest, power failures, electrical power surges or current fluctuations, nuclear or other civil military emergencies, or acts of legislative, judicial, executive, or administrative authorities.

Section 25. Limit of Liability and Relief from Consequential Damages. NSP's total liability to Board for damages or injury to persons or property that may be caused by or arise from performing any obligation under the Contract shall be limited only to the amounts paid to NSP as billing agent for the Board. Neither party will be liable to the other for any indirect or consequential damages, whether in contract or tort (including negligence). The Board will look solely to Contractor for any damages or injuries to persons or property that may be caused by or arise from performing the Construction Services contemplated by this Agreement.

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

NORTHERN STATES POWER COMPANY
d.b.a. Xcel Energy
Taxpayer ID # 41-1967505

By _____

Its _____

Approved:

**BOARD OF WATER COMMISSIONERS
OF THE CITY OF SAINT PAUL**

By _____
Stephen P. Schneider, General Manager
Saint Paul Regional Water Services

By _____
Matt Anfang, President

Approved as to form:

By _____
Mollie Gagnelius, Secretary

By _____
Assistant City Attorney

By _____
Todd Hurley, Director
Office of Financial Services
8-69082920-8215999810 \$ 110,000
8-69082920-8215999810 \$1,650,000
8-69082920-8215999810 \$ 110,000
\$1,870,000 Total

By _____
Readus Fletcher
Department of Human Rights and Equal
Economic Opportunity