



Request for Council Action

TO: Mayor and City Council
THROUGH: Tim Murray, City Administrator
FROM: Mark DuChene, City Engineer
MEETING DATE: April 27, 2021
SUBJECT: Resolution 2021-090 Approve Restoration of Shoreline License Agreement and Declaration of Restrictive Covenants and Easement Agreement with Northern States Power Company (NSP, aka Xcel Energy)

Background:

The City has been working with Xcel Energy since mid-2019 on some environmental remediation and clean up work at the site of a former manufactured gas plant (MGP) that was located in the area between 9th and 10th Street NE from Central Avenue to the Straight River (see attached diagram). The MGP was operated by Northern States Power (Xcel Energy) in the early half of the 1900's and the portion of the MGP that was located east of the former railroad grade was sold to the City by NSP in 1978.

Xcel has been working internally to close out similar sites across the region and in 2019 it was determined that additional environmental review and testing was required at the Faribault MGP site. At that time Xcel, in coordination with the MPCA and with access approval from the City and nearby private property owners, started working on some testing and sampling of soils and ground water in the area to determine what, if any, additional remediation work was required. The results of those investigations determined that there were a few properties that needed to have some basement sealing done to eliminate/reduce the potential for soil vapor gases to enter the dwellings as well as some stream bank restoration required along the Straight River. The basement sealing was done at Xcel's expense in cooperation with the homeowners that participated (note: some homeowners declined to participate despite numerous attempts to contact them by Xcel). The shoreline restoration as well as sealing of all existing ground water monitoring wells, also solely at Xcel's expense, is anticipated to be completed in the next 12 months or so pending DNR permit approvals.

With that said, Xcel has requested that the City execute the two attached agreements related to the site remediation activities. The first agreement

the "Restoration of Shoreline License Agreement" grants Xcel and their contractors access to the necessary City owned lands to complete the well sealing and shoreline restoration work and that once complete the City will then be responsible for long-term operations and maintenance of the shoreline restoration area.

The second agreement the "Declaration of Restrictive Covenants and Easement Agreement" places restrictions on the future use of the City owned land which would limit the land to primarily a recreational use in perpetuity. Given the lands previous use history and location within the flood plain, City staff feels this is a reasonable agreement in exchange for the work Xcel is completing to restore the river bank and clean up the monitoring wells on site, all of which is being done at no cost to the City.

The attached resolution authorizes the Mayor and City Administrator to execute the attached agreements and allows minor changes to the agreements to be made.

Recommendation:

Approve Resolution 2021-090

Attachments:

- Resolution 2021-090
- Restoration of Shoreline License Agreement
- Declaration of Restrictive Covenants and Easement Agreement

CITY OF FARIBAULT

RESOLUTION #2021-090

APPROVE RESTORATION OF SHORELINE LICENSE AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS AND EASEMENT AGREEMENT WITH NORTHERN STATES POWER COMPANY (NSP, AKA XCEL ENERGY)

WHEREAS, City is the owner of a parcel of land located in the Faribault, Minnesota, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"); and

WHEREAS, the Property has been and continues to be used as a recreational parkland and was formerly operated as a manufactured gas plant ("MGP") and MGP constituents were discovered in soils and groundwater on, under, or around the Property; and

WHEREAS, Northern States Powers (NSP) performed a remediation of the Property under the direction and oversight of the Minnesota Pollution Control Agency ("MPCA") pursuant to SR0000140, which included, among other tasks, excavation of certain targeted and accessible MGP constituents to meet site cleanup standards (collectively, the "Remediation"); and

WHEREAS, NSP intends to perform additional shoreline restoration activities at the Property to protect against erosion along the shoreline, the City intends to perform long term operation and maintenance activities for the restored shoreline, and the City intends to restrict future use of the Property to recreational and remedial uses (the "Intended Use"); and

WHEREAS, prior to NSP performing additional shoreline restoration activities at the Property, NSP and the City desire to impose certain restrictive covenants that will run with the land, including limitations on permitted land use and future development of the Property, where such restrictions shall not be diminished by any rezoning or variance in zoning in the future, for the purpose of protecting human health and the environment all as more fully set forth herein; and

WHEREAS, the City in consultation with NSP prepared the following agreements included in the following exhibits attached to this Resolution

1. Exhibit A: Restoration of Shoreline License Agreement and

Declaration of Restrictive Covenants and Easement Agreement

; and

WHEREAS, the Faribault City Council acknowledges that said Agreements are in a draft form that may require limited revisions before the execution and recording of said Agreements.

NOW, THEREFORE BE IT RESOLVED, that Faribault City Council hereby approves the draft Agreements included in A of this Resolution and hereby authorizes City Staff and the City's Consultants to make limited revisions to the Agreements as may be necessary to finalize the Agreements.

ALSO, BE IT RESOLVED, that the Faribault City Council hereby authorizes the Mayor and City Administrator to execute and record said final Agreements.

Date Adopted: April 27, 2021

Faribault City Council

Kevin F. Voracek, Mayor

ATTEST:

Timothy C. Murray, City Administrator

EXHIBIT A

RESTORATION OF SHORELINE LICENSE AGREEMENT

This Restoration of Shoreline License Agreement (“Agreement”) is entered into this 27 day of April, 2021, by and between the City of Faribault, Minnesota, a municipal corporation (the “City”), and Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy (“NSP”) (also referred to individually as “Party” and collectively as “the Parties”).

- A. The City is the current owner of property, commonly known as Trail’s Edge Park, a portion of which is located immediately east of commercial properties between 9th and 10th Street Northwest and bordered on the east by the Straight River and depicted in Exhibit A (“the Property”).
- B. The City and NSP previously cooperated on investigation and remediation activities at the Property, under the oversight of the Minnesota Pollution Control Agency (the “MPCA”), from the early-1980s through approximately 2005. During these previous investigation and remediation activities, excavation activities occurred and groundwater monitoring wells were installed and actively monitored. In 2005, the MPCA concluded that remediation activities were completed and no further groundwater monitoring was required. During NSP’s monitoring and maintenance activities in 2019 related to remaining groundwater monitoring wells, potential suspect manufactured gas plant (“MGP”) material was identified along the shoreline of the Property and reported to the City and subsequently to the MPCA. NSP and the City cooperated on an investigation of current site conditions. The parties have determined that the groundwater monitoring wells should now be properly abandoned and additional restoration should be performed along the shoreline to protect against erosion.
- C. The City has the authority to grant NSP access to the Property to perform this work to seal the existing wells and to perform restoration of the shoreline. The City has agreed to grant to NSP and its designees, contractors, subcontractors and consultants (collectively “NSP Representatives”) a right of entry to the Property for these purposes. In exchange, the City will perform long term operation and maintenance of the restored shoreline and will place additional institutional controls on the use of the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

- 1. Grant of Access License. Subject to the terms of this Agreement, the City grants and conveys to NSP and NSP Representatives a non-exclusive license to access the Property for: (a) sealing and properly abandoning the existing wells (as shown on Exhibit B); and (b) performing shoreline restoration work at the Property (as described in Exhibit C) (the “Shoreline Restoration”), (collectively, the “NSP Activities”). Access is granted to all portions of the Property that are reasonably necessary to accomplish the NSP Activities. Access is further granted with the

following conditions:

(a) Prior to entry, NSP or NSP Representatives shall notify the City to inform it of the specific planned NSP Activities. At least 72 hours before entering the Property to perform the NSP Activities, NSP or a NSP Representative shall contact the City Administrator, or their designee, to advise the City of the planned entry.

(b) NSP shall conduct all of the NSP Activities in compliance with all applicable laws and regulations and in accordance with the standards commonly employed by professionals conducting such activities, including, but not necessarily limited to, securing any permits that are otherwise required for such activities.

(c) NSP will restore areas disturbed by the NSP Activities to the prior conditions as appropriate and as reasonably directed by the City's engineering department.

(d) The City reserves the right to occupy and use the Property for all purposes not inconsistent with the license granted under this Agreement and the environmental covenant as described in Exhibit E.

2. City Activities. In consideration of the performance of the Shoreline Restoration, the City agrees that it shall be responsible for ongoing inspection and maintenance of the restored shoreline, as described in Exhibit D. In addition, the City shall, concurrently herewith, place an environmental covenant on a portion of the Property, in the form of Declaration attached as Exhibit E, to ensure that the property area described in the Declaration and that makes up a portion of Trail's Edge Park continues to be used only for recreational purposes and remedial work, if any, in the future. The City also agrees to use good faith efforts to renew said Declaration in the event the Declaration expires due to statutory time limits, by recording a new Declaration in substantially the same form as the Declaration described in Exhibit E.

3. Term; Termination. The term of the license described in Section 1 of this Agreement shall begin upon the date first written above (the "Effective Date") and terminate automatically following the earlier of (i) the completion of the NSP Activities, or (ii) January 1, 2023. Notwithstanding the foregoing, should NSP breach any of the terms of this Agreement, the City may terminate this Agreement upon 30 days' prior written notice to NSP if NSP fails to cure said breach within such 30-day period.

4. No Creation of Rights/Reservation of Rights. Nothing in this Agreement shall be construed to convey on either Party or any third party the right to pursue any claims, causes of action or demands, in law or equity, that relate to any environmental condition at the Property or the remediation of such condition. Both parties fully reserve all rights, claims, causes of action, demands, and defenses with respect to the Property. Neither Party intends by entering into this Agreement to waive such rights as to each other or as to any third party. The reservation of rights in this paragraph shall survive termination of this Agreement.

5. Release. The City remises, releases, and forever discharges NSP and its former, present, and future parents, subsidiaries, affiliates, divisions, corporate predecessors, corporate

successors, assigns, officers, directors, employees, and agents from any claim, demand, liability, judgment, award, fine, lien, loss, damage, expense, charge, or cost of any kind or character (including reasonable attorneys' fees and court costs) related to or arising from NSP's performance of the NSP Activities, except to the extent of NSP's negligent performance of the NSP Activities or any breach of this Agreement.

6. Indemnification; Liability. The City shall not be responsible or liable for, and NSP shall defend, indemnify, and hold harmless the City and any officers, officials, agents, and employees of the City, from any third party claim, demand, liability, judgment, award, fine, lien, loss, damage, expense, charge, or cost of any kind or character (including reasonable attorneys' fees and court costs) arising directly from NSP's negligent performance of the NSP Activities, including, without limitation, claims arising from any injury or damage to the person or property of NSP, its employees, contractors, or any other person which occurs as a result of the negligent performance of the NSP Activities. This section shall survive termination of the Agreement. This paragraph shall not be construed as waiver by the City of any statutory liability limitations or immunities set forth in Minnesota Statutes, Chapter 466. Neither Party shall be liable to the other for punitive, indirect, exemplary, consequential, or incidental damages arising in connection with this Agreement, and each party hereby waives its right to claim any such damages.

7. Acknowledgements. NSP acknowledges that its use of the Property is with the City's permission and is not open, continuous, notorious, or in any other manner supportive of a claim of adverse possession, prescriptive easement, or other entitlement to the Property or the area licensed. The Parties acknowledge that this Agreement is a license for NSP to access the Property for the purposes described in this Agreement and does not confer any estate or interest in the Property to NSP. The Parties further acknowledge that this Agreement does not create the relationship of principal and agent or of partnership or joint venture or of any association between the Parties and that the sole relationships of the Parties is that of licensor and licensee under this Agreement.

8. Modification. Neither this Agreement nor any provisions may be changed, waived, discharged or terminated orally, but only by instrument in writing signed by both Parties hereto.

9. Assignability. Neither Party shall assign this Agreement without the prior written consent of the other Party.

10. Waiver. Any waiver by either Party of a breach of any provisions of this Agreement shall not affect in any respect the validity of the remainder of this Agreement.

11. Severability. If any portion of this Agreement is held invalid by a court of competent jurisdiction, such decision shall not affect the validity of any remaining portion of the Agreement.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota. The Parties waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

13. Successor and Assigns. This Agreement shall bind the Parties and their heirs, personal representatives, successors and assigns.

[signature page to follow]

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement designated on their respective signature pages. Each individual executing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by, and to bind the Party on whose behalf such individual is executing. The parties hereto have executed this Agreement in multiple counterparts as of the last date written below.

Xcel Energy Services Inc., on behalf of Northern States Power Company

By: _____

Its: _____

Date: _____

City of Faribault

By: _____

Its: Mayor

Date: _____

By: _____

Its: City Administrator

Date: _____

EXHIBIT A



EXHIBIT B



Exhibit C – Shoreline Restoration
Trail’s Edge Park – Straight Riverbank Stabilization
City of Faribault Minnesota

The purpose of this work is to stabilize a portion of the Straight Riverbank within the City of Faribault Trail’s Edge Park, generally located between 9th and 10th Street Northeast and bordered on the east by the Straight River.

Scope of Work

1. The project area is located adjacent to areas that were previously stabilized by NSP in 1995/1996 and is downstream of the area that the City of Faribault stabilized in 2020 as shown on the Figure 1.
2. The paved trail and dirt trail that are present within the work area will be temporarily closed for a few weeks during certain phases of project implementation for public safety. The duration of the closures will be minimized to the extent possible and the specific closure schedule will be communicated with the City of Faribault prior to the start of the project. Barricades and signs will be posted for the park and trail users. Trail areas disturbed by the construction activities will be reasonably restored by NSP upon completion of the work.
3. Bank material and subsurface features will be excavated to the depths ranging between 2 feet to 7 feet below current bank surface grade in the areas shown on Figure 1. Excavated material will be loaded and hauled to the Vonco II Landfill located in Becker, Minnesota for disposal.
4. Clean fill will be placed within limits of excavation and compacted.
5. The Straight River shoreline slope will be stabilized and armored with riprap in accordance with the approved Minnesota Department of Natural Resources approved permit.
6. Soil erosion and sediment transport will be controlled in accordance with a site-specific Stormwater Pollution Prevention Plan (SWPPP), which shall be subject to the review of the City. NSP shall apply for and comply with a City grading permit, which shall be provided by the City to NSP at no cost.
7. Disturbed areas will be revegetated with permanent perennial vegetation and maintained to achieve compliance with the SWPPP until it is closed in accordance with permit requirements.

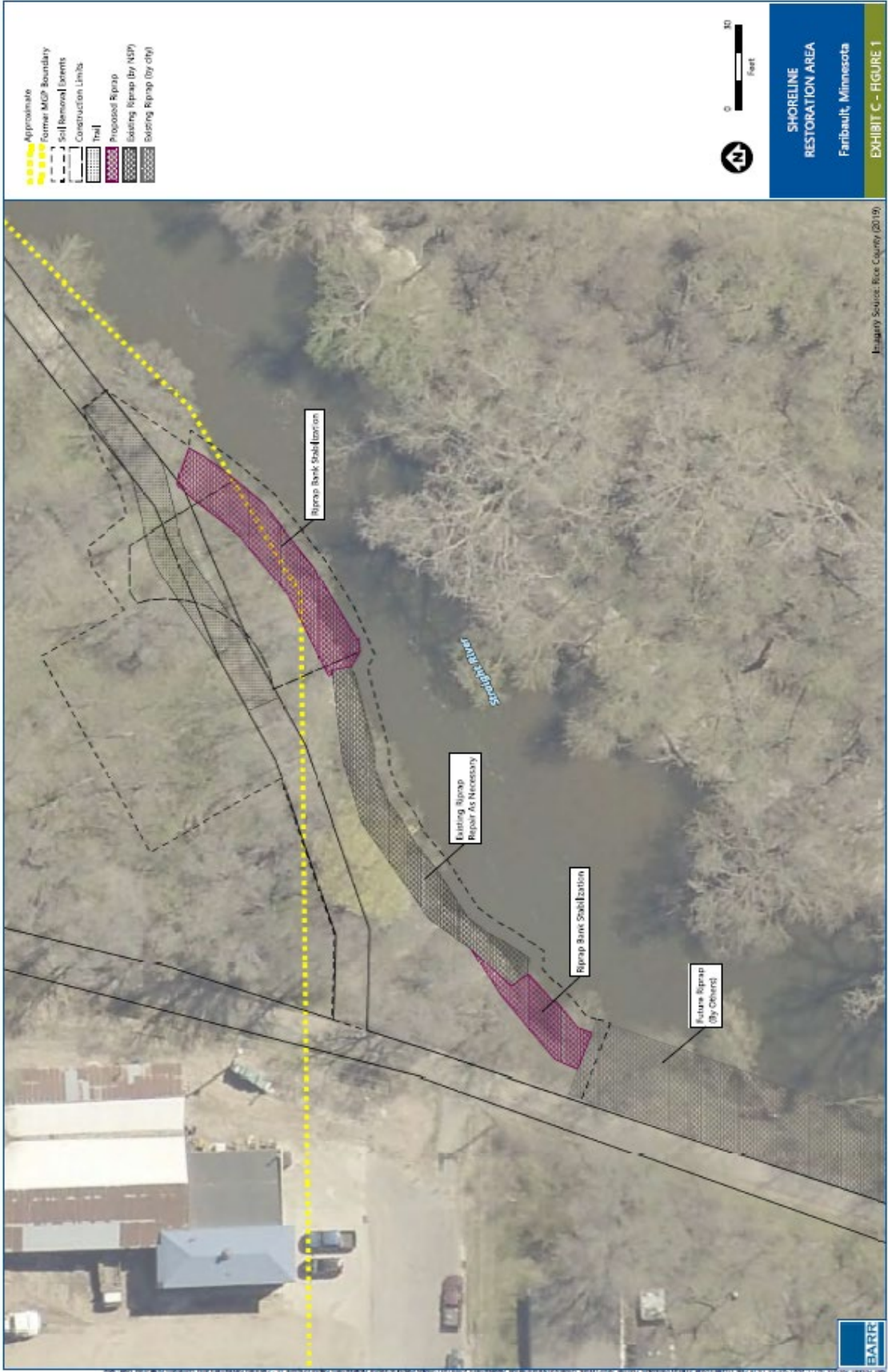


Exhibit D - Operation and Maintenance
Trail's Edge Park – Straight Riverbank Stabilization
City of Faribault Minnesota

Inspections and long-term maintenance are necessary to achieve the intended lifespan and function of the shoreline stabilization. A typical inspection and maintenance program performed by the City may include, but is not limited to the following:

1. Perform maintenance for items identified during inspections. This may include:
 - Provide notification to MN DNR for any planned maintenance under the existing permits and prepare documentation/records of maintenance activities.
 - Repair/restore rock riprap that may have been displaced or erosional damage that occurs at or near the upstream or downstream ends of rock riprap revetment keyways.
 - Repair the toe of rock riprap if excessive scour has exposed the keyways in the streambed.
 - Remove large woody debris from the stream channel if waterflow is channeling towards the riprap and is causing erosion or will potentially cause erosion of the streambanks. Standing trees should not be removed unless they are creating a hazardous condition for users.

2. Perform major restoration/maintenance following major flooding events that cause significant damage beyond what would be assumed under typical on-going operation and maintenance, including the following:
 - Provide notification to MN DNR for planned work to determine if the work can be conducted under the maintenance clause of the existing permit(s) or if an amendment is required.
 - Replace and restore rock riprap that may have been displaced.
 - Repair areas with observed deformation, which may indicate underlying soil loss.
 - Restore/repair any erosion or damage that occurs at or near the upstream or downstream ends of rock riprap revetment keyways.
 - Repair the toe of all rock riprap revetments for excessive scour that exposes the keyways in the streambed.
 - Remove large woody debris from the stream channel if waterflow is channeling towards the riprap and is causing erosion or will potentially cause erosion of the streambanks. Standing trees should not be removed unless they are creating a hazardous condition for users.
 - Retain restoration/maintenance documentation in compliance with MN DNR permit requirements.

EXHIBIT E

DECLARATION OF RESTRICTIVE COVENANTS AND EASEMENT AGREEMENT

This DECLARATION OF RESTRICTIVE COVENANTS AND EASEMENT AGREEMENT (this “Declaration”) is made this day of _____, 2021 (the “Effective Date”), by the City of Faribault, a Minnesota municipal corporation (“City”), for the benefit of Northern States Power Company, a Minnesota corporation (“NSP”).

RECITALS:

WHEREAS, City is the owner of a parcel of land located in the Faribault, Minnesota, more particularly described on Exhibit A attached hereto and made a part hereof (the “Property”); and

WHEREAS, the Property has been and continues to be used as a recreational parkland and was formerly operated as a manufactured gas plant (“MGP”) and MGP constituents were discovered in soils and groundwater on, under, or around the Property; and

WHEREAS, NSP performed a remediation of the Property under the direction and oversight of the Minnesota Pollution Control Agency (“MPCA”) pursuant to SR0000140, which included, among other tasks, excavation of certain targeted and accessible MGP constituents to meet site cleanup standards (collectively, the “Remediation”); and

WHEREAS, NSP intends to perform additional shoreline restoration activities at the Property to protect against erosion along the shoreline, the City intends to perform long term O&M activities for the restored shoreline, and the City intends to restrict future use of the Property to recreational and remedial uses (the “Intended Use”); and

WHEREAS, prior to NSP performing additional shoreline restoration activities at the Property, NSP and the City desire to impose certain restrictive covenants that will run with the land, including limitations on permitted land use and future development of the Property, where such restrictions shall not be diminished by any rezoning or variance in zoning in the future, for the purpose of protecting human health and the environment all as more fully set forth herein.

AGREEMENT:

1. Declaration of Restrictive Covenants

(a) Declaration. City, on behalf of itself, its successors and assigns, does hereby covenant and declare that the Property shall be subject to all of the restrictions set forth herein.

(b) Purpose. The purpose of this Declaration is to provide public notice of certain conditions affecting the Property and to impose on the Property certain use and development restrictions as covenants that will run with the land for the purpose of protecting human health and the environment by reducing the risk of exposure to

contaminants on, under, in or above the Property.

(c) Compliance with Applicable Laws. In addition to observing all of the restrictive covenants set forth in this Declaration, whoever shall own the Property from time to time including the City and any subsequent owners (the “Subsequent Owner(s)”) shall be responsible for complying with all federal, state, and local laws, regulations and guidance applicable to the Property (“Applicable Law”).

(d) Disclosure – Known or Suspected Site Conditions. Residual soil and groundwater impacts and MGP infrastructure and debris could be present at, on, or beneath ground surface. Groundwater in the area may also be impacted by other non-MGP related sources, including but not limited to trichloroethylene and other gasoline related compounds.

(e) Restrictions on use. The following covenants, conditions, and restrictions apply to the Property, run with the land, and are binding upon all successors in interest:

(i) Recreational Uses Allowed. The Property may be used for recreational uses as a parkland.

(ii) Residential Use prohibited. The Property may not be used or developed for residential purposes, including child or adult daycare facilities.

(iii) Other Non-Industrial Uses Restricted. The Property may not be used for commercial, agricultural (including but not limited to gardening) or other non-industrial uses.

(iv) Groundwater Restrictions. No groundwater or monitoring well may be placed on the Property except as approved by the MPCA, or its successor, and no groundwater underlying the Property may be used for a potable water supply or for irrigation purposes without the MPCA’s, or its successor’s, written approval. Any groundwater that is collected by a sump system or other means on the Property must be properly managed, discharged, and disposed, per Applicable Law and MPCA requirements.

(v) Soil Restrictions. Any proposed disturbance or alteration of soils or sub-surface construction activities on the Property must be reported to the MPCA or its successor. The City and each Subsequent Owner must properly screen, characterize, manage, handle, and dispose of any impacted soils the City and any Subsequent Owner encounters during any soil disturbance or construction activities based on Applicable Law at the time residuals are encountered. No subsurface excavation is allowed, other than minimally invasive restoration and re-vegetation excavation activities, in the Shoreline Restoration Area depicted in the map (attached hereto as Exhibit C – Figure 1) or in the event any remediation or environmental investigation work is performed at the Property. Soil testing and sampling reasonably necessary for the construction of improvements or

remediation activities shall be allowed.

(vi) Restrictions on New Structures. No underground structures or pilings shall be constructed on the Property, except for utilities or public ways (i.e., for sewer, water, electricity, gas, public trails or roads). No above ground structure may be built on the Property where sustained or frequent human occupancy may occur inside the structure. A slab on grade open area picnic shelter and/or playground may be constructed as allowed by the MPCA or its successor.

2. Inspections and Maintenance. The City and each Subsequent Owner shall be responsible for ongoing inspection and maintenance of the restored shoreline located on the Property, as described in Exhibit B.

3. Release. Each Subsequent Owner and such Subsequent Owner's tenants and occupants, shall be deemed to have remised, released, and forever discharged the City and NSP and NSP's former, present, and future parents, subsidiaries, affiliates, divisions, corporate predecessors, corporate successors, assigns, officers, directors, employees, and agents, from any and all manner of actions or causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, warranties, agreements, judgments, claims, costs expenses, and liabilities, ("Claims") which have resulted or may result from, or which arise out of or are associated with any known or suspected site conditions as described in Section 1(d) of this Declaration.

4. Access Easement. The City hereby grants to NSP and its representatives a perpetual, non-exclusive easement to access and inspect the Property to ensure compliance with this Declaration and to ensure Property uses remain consistent in perpetuity with the permissible uses described in section 1(e) of this Declaration. Any access by NSP or its representatives is granted subject to the following conditions:

(a) Prior to entry, NSP or its representatives shall notify the then-current owner to inform them of the specific planned NSP Activities, at least 72 hours before entering the Property.

(b) NSP shall conduct all access and inspection activities authorized herein in compliance with all applicable laws and regulations and in accordance with the standards commonly employed by professionals conducting such activities.

5. Third Party Beneficiaries. For purposes of enforcing the restrictive covenants set forth herein, NSP shall at all times be deemed to be third party beneficiary of all of the benefits and rights imposed by this Declaration.

6. Modification of Restrictions. Any request for modification or rescission of this Declaration shall be made in writing to the City and NSP. This Declaration instrument may be modified or rescinded only with the written approval of the City and NSP or their successors and assigns.

7. Notice requirement. The City and each Subsequent Owner shall include in any

instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A DECLARATION OF RESTRICTIVE COVENANTS, DATED _____, 2021, RECORDED IN THE OFFICE OF THE COUNTY RECORDER/REGISTRAR OF TITLES] OF RICE COUNTY ON _____, 2021, AS DOCUMENT NO. _____, ENFORCEABLE BY THE CITY OF FARIBAULT, MINNESOTA AND NORTHERN STATES POWERCOMPANY.

8. Enforcement. The City and/or NSP shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. Enforcement of the terms of this instrument shall be at the discretion of the City and NSP and any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the City and/or NSP of such term or of any subsequent breach of the same or any other term, or of any of the rights of the City or NSP under this instrument.

9. Covenants. The City hereby covenants that the City is lawfully seized of the Property in fee simple and that the City has a good and lawful right and power to impose use restrictions on the Property.

10. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To the City: City of Faribault
208 1st Ave NW
Faribault, MN 55021
Attn: City Administrator

Kennedy & Graven, Chartered
700 Fifth Street Towers
150 South 5th Street
Minneapolis, MN 55402
Attn: Scott J. Riggs

To NSP: Manager, Siting and Land Rights
Xcel Energy Services Inc.
414 Nicollet Mall – 6th Floor
Minneapolis, MN 55401

With a copy to:
General Counsel
Xcel Energy Services Inc.
1800 Larimer Street, Ste 14
Denver, Colorado 80202

11. General provisions.

(a) Controlling law. The interpretation and performance of this instrument shall be governed by Minnesota law.

(b) Liberal construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to affect the purpose of this instrument. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, expired or terminated, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, expired or terminated, as the case may be, shall not be affected thereby.

(d) Successors. The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running with the Property.

(e) Termination of Rights and Obligations. A party's rights and obligations as City or as Subsequent Owner under this instrument terminate upon transfer of the party's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

[Signature page follows.]

IN WITNESS WHEREOF, City has caused this Declaration to be executed as of the Effective Date.

City of Faribault,
a municipal corporation in the State of Minnesota

By: _____
Name: _____
Title: Mayor

By: _____
Name: _____
Title: City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

Personally, _____ and _____, the mayor and city administrator, respectively, of the City of Faribault, came before me this _____ day of _____, 2021, who executed the above instrument and acknowledged the same.

Name: _____
Notary Public, State of Minnesota
My Commission: _____

THIS INSTRUMENT WAS DRAFTED BY:

Lica Tomizuka
Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center, 90 South Seventh Street
Minneapolis, Minnesota 55402, USA

EXHIBIT A

Legal Description and Depiction of the Property

[to be inserted]



Exhibit B - Operation and Maintenance
Trail's Edge Park – Straight Riverbank Stabilization
City of Faribault Minnesota

Inspections and long-term maintenance are necessary to achieve the intended lifespan and function of the shoreline stabilization. A typical inspection and maintenance program performed by the City may include, but is not limited to the following:

1. Perform maintenance for items identified during inspections. This may include:
 - Provide notification to MN DNR for any planned maintenance under the existing permits and prepare documentation/records of maintenance activities.
 - Repair/restore rock riprap that may have been displaced or erosional damage that occurs at or near the upstream or downstream ends of rock riprap revetment keyways.
 - Repair the toe of rock riprap if excessive scour has exposed the keyways in the streambed.
 - Remove large woody debris from the stream channel if waterflow is channeling towards the riprap and is causing erosion or will potentially cause erosion of the streambanks. Standing trees should not be removed unless they are creating a hazardous condition for users.
2. Perform major restoration/maintenance following major flooding events that cause significant damage beyond what would be assumed under typical on-going operation and maintenance, including the following:
 - Provide notification to MN DNR for planned work to determine if the work can be conducted under the maintenance clause of the existing permit(s) or if an amendment is required.
 - Replace and restore rock riprap that may have been displaced.
 - Repair areas with observed deformation, which may indicate underlying soil loss.
 - Restore/repair any erosion or damage that occurs at or near the upstream or downstream ends of rock riprap revetment keyways.
 - Repair the toe of all rock riprap revetments for excessive scour that exposes the keyways in the streambed.
 - Remove large woody debris from the stream channel if waterflow is channeling towards the riprap and is causing erosion or will potentially cause erosion of the streambanks. Standing trees should not be removed unless they are creating a hazardous condition for users.
 - Retain restoration/maintenance documentation in compliance with MN DNR permit requirements.

Exhibit C (Figure 1) Shoreline Restoration Area

