



## ***City Council Memorandum***

**To:** Mayor Fasbender & City Council Members  
**From:** Ryan Stempski – Public Works Director/City Engineer  
**Date:** April 15, 2024  
**Item:** Authorize Signature of Xcel Energy Construction Agreement for 4 Street Light Poles

### **COUNCIL ACTION REQUESTED**

Council is requested to authorize signature of the attached Xcel Energy Construction Agreement to install 4 street light poles within the 2024 Neighborhood Infrastructure Improvements.

### **BACKGROUND INFORMATION**

The street light poles are located within the 2024 Neighborhood Infrastructure Improvement project area. The total cost of these 4 poles is \$18,044 upfront and \$5.59 per month per light for electricity and maintenance for 25 years. The 4 poles are necessary to come into compliance with our street light standard spacing.

### **STAFF RECOMMENDATION**

Staff is recommending that the City Council authorize signature of the Xcel Energy Construction Agreement to install 4 additional light poles withing the 2024 Neighborhood Infrastructure Improvements.

### **ATTACHMENTS**

- Xcel Energy Construction Agreement



Outdoor Lighting  
825 Rice Street  
St. Paul, MN 55117

### Construction Agreement For Street Lighting Facilities

The customer identified below ("Customer") and Northern States Power Company, a Minnesota Corporation and wholly owned subsidiary of Xcel Energy Inc. ("Xcel Energy" or "Company") agree to this Construction Agreement for Street Lighting Facilities, including the attached Terms and Conditions, for the following street light facilities:

Customer: **City of Hastings**  
Address: **101 4<sup>th</sup> Street East**  
City: **Hastings**

State: **MN**      Zip Code: **55033**  
Dollars: **\$18,044.00**

Project charges of: **Eighteen thousand forty-four dollars and 00/100**

In accordance with the following terms of payment: **Payment due 30 days after construction is completed.**

For Association or City of: **City of Hastings will be billed monthly rate per luminaire after installation, account #6960218.**  
Streetlights/Facilities Location: **2024 Streetlight Additions: Highland Dr, Brittany Rd, 17<sup>th</sup> St W, and Brooke Ln.**

Rate Code: **A30 Pre-Pay Option 30-40W LED (3,000 Lumens, Labeled "A"). Current monthly rate is \$5.59 per luminaire.**

Service consisting of: **Pre-Pay Option rate includes electricity and maintenance for 25 years from installation.**

**Terms and Conditions listed in: MN ELECTRIC RATE BOOK RULES FOR APPLICATION OF STREET LIGHTING RATES.**

Installation of Company Owned streetlight facilities consisting of:	
<b><u>Designation of Lamps:</u></b>	<b><u>Number of Luminaries:</u></b>
Install new fiberglass poles and traditional streetlight fixtures.	4- 18' Direct Buried Fiberglass Poles Pole Color – Dark Bronze
Install cable and conduit by plow during construction, 562' #6 duplex secondary cable and 562' 1½ conduit.	4- LED Traditional Fixtures (3,000 Lumens) Fixture Color – Dark Bronze
If unable to plow, additional bore cost will be charged to city.	
Pole locations to be staked by the customer prior to installation.	
Restoration is not included in this contract.	
<b>Project charges valid for 60 days from signing of contract.</b>	

Customer and Xcel Energy agree to the attached terms and conditions for the installation and moving of the facilities identified above. Customer and Xcel Energy agree that the operation of the facilities shall be subject to the General Street Lighting Contract for Operations & Maintenance Services between Customer and Xcel Energy, dated.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Customer: City of Hastings

Xcel Energy

By: \_\_\_\_\_

By: \_\_\_\_\_

By: Mary Fasbender, Mayor

Title: Christie A. Black, Operations Manager –

Kelly Murtaugh, City Clerk

Minnesota as authorized agent for Northern States Power Co.

<b>XCEL ENERGY USE ONLY</b>	Date: <b>03/20/24</b>	Div: <b>Newport</b>
Xcel Energy Outdoor Project Coordinator:	<b>Angela Adesoro</b>	
Xcel Energy Project Number:	<b>SAP Notification #14372841</b>	
Customer Charges Paid:		



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## TERMS AND CONDITIONS

Customer and Company agree to the following terms and conditions:

- 1. Acceptance.** Execution of this Agreement constitutes Customer's acceptance of the express terms of Company's proposal and the offer contained therein, which are included and incorporated into this Agreement. Any additional or different terms proposed by Customer, or any attempt by Customer to vary in any degree any of the terms in this Agreement in Customer's acceptance, are hereby objected to and rejected, and (i) such additional or different terms shall not operate as a rejection of the incorporation of the Company's proposal in this Agreement unless such variances are with respect to terms involving the description, quantity, or delivery schedule of the Work to be performed by Company as described in Company's proposal ("the Work" means the supplying of any labor, materials, or any other work of Company expressly described in Company's proposal); (ii) such additional or different terms shall be deemed a material alteration hereof; and (iii) Company's proposal shall be deemed accepted by Customer and incorporated into this Agreement without said additional or different terms.
- 2. Request for Installation; Rights.** Customer requests that Company install outdoor lighting at the location(s) designated on page one and/or as shown on the attached exhibit. Customer grants Company any right, privilege, and easement to install, operate and maintain its facilities, including underground facilities, on the property.
- 3. Installation Requirements.** Customer agrees that, prior to Company starting work: (1) the route of Company's service installation shall be accessible to Company's equipment; (2) Customer will remove all obstructions from the route at no cost or expense to Company; (3) Customer will clearly mark all septic tanks, drain-fields, sprinkler systems, water wells, owner-installed electric or pipeline facilities, or other Customer-owned facilities in the installation route; and (4) the ground elevation along the route shall not be above or more than four inches below the final grade. Company will contact the appropriate agency to locate 3<sup>rd</sup> party utility facilities (phone, cable, etc.) on Customer property. Customer agrees Company is not responsible for damage to Customer-owned underground facilities not marked at the time of outdoor lighting service installation.
- 4. Installation Cost Contribution.** Customer agrees to pay an installation cost contribution provided in Project Charges on page one. Customer is responsible for any additional installation costs incurred by Company because of (1) soil conditions that impair the installation of underground facilities, such as rock formations, etc., (2) extensive existing underground facilities, and (3) any existing conditions that exist but did not exist at the time the installation cost was determined, such as new sidewalks, curbing, black top, paving, sod or other landscaping and obstructions along the cable route.
- 5. Winter Construction Charges.** When underground facilities are installed between October 1 and April 15, inclusive, because of failure of Customer to meet all requirements of the Company by September 30, or because the Customer's property, or the streets leading thereto, are not ready to receive the underground facilities by such date, such work will be subject to a Winter Construction Charge when winter conditions of six inches or more of frost exist, snow removal or plowing is required to install service, or burners must be set at the underground facilities in order to install service for the entire length of the underground service. Winter construction will not be undertaken by the Company where prohibited by law or where it is not practical to install underground facilities during the winter season. The charges apply to frost depths of 18" or less. At greater frost depths, the Company may individually determine the job cost. The Company also reserves the right to charge for any unusual winter construction expenses. All winter construction charges are non-refundable and are in addition to any normal construction charges.
- 6. Schedule; Delays.** Quoted shipping and completion dates are approximate and are based on prompt receipt of all necessary information and approvals from Customer and access as required by Company and its contractors or subcontractors (if any) to the site and to the equipment which is the subject of this Agreement. If Company's performance is delayed by Customer's suspension of work, in whole or in part, or by any act or omission of Customer, the time for performance will be extended by the period required by Company to return to the state of performance that existed before the delay. If the delay or suspension continues for sixty (60) days, Company has the right to cancel or renegotiate the Agreement. Customer will pay an equitable adjustment based on a claim submitted by Company for all reasonable costs, damages and expenses incurred by Company incident to the delay or suspension.



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7. **Changes.** The prices for any extras or changes to the scope of the Work or modifications to the payment or performance schedule will be agreed upon in writing before either party will be obligated to proceed with such changes. Performance of any change will not waive any claims for equitable adjustment in price or schedule.
8. **Relocating Facilities.** Customer agrees to pay the cost of relocating any portion of facilities, including underground facilities, to accommodate Customer or as required due to altering of grade, additions to structures, installation of patios, decks, gardens, sidewalks, curbing, paving, blacktop, sod, landscaping, or any other condition which makes maintenance of the Company's facilities impractical. Company shall notify Customer of such relocations prior to incurring relocation costs.
9. **Environmental.** Prior to the start of the Work, Customer will provide notice of any hazardous materials or hazardous situations that it is aware of with respect to the facilities where the Work is to be performed or that could affect the Work. In the event Company encounters the existence of asbestos, asbestos containing materials, formaldehyde, lead, or potentially toxic or otherwise hazardous material in the performance of the Work, the discovery thereof shall constitute a cause beyond Company's reasonable control and Company shall have the right to cease or not commence the Work until the area has been made safe by Customer or Customer's representative, at Customer's expense.
10. **Restoration.** Company will restore any excavation of the boulevard on Customer's property with existing soil, so it is level and clean. Customer is responsible for the final compacting, loam, seeding, sod, or watering of the boulevard at Customer's expense unless otherwise noted on page one of this Agreement.
11. **Additional Charges.** In addition to the project charges on page one of this Agreement, Company shall be compensated for any added costs of performing the Work attributable to any one or more of the following: (i) any and all extras and change orders and any and all other additional work mutually agreed by Customer and Company; (ii) any and all costs and expenses related to asbestos or other environmental matters, any unforeseen conditions or any changes in the law; and (iii) any and all added costs and expenses of performing the Work attributable to any change by Customer in the criteria or information for the facility or to any delay or breach by Customer or its subcontractors.
12. **Operations; Maintenance.** Customer requests and authorizes Company to provide illumination and maintain the street lighting facilities under the Terms and Conditions as described **Terms and Conditions listed in: MN ELECTRIC RATE BOOK RULES FOR APPLICATION OF STREET LIGHTING RATES**, which shall be effective upon the completion date of the street light installation.
13. **Payments.** Unless otherwise specified in Company's proposal, Company may at its option invoice Customer upon completion of the Work or invoice Customer monthly for construction work performed under this Agreement. Customer shall pay Company all invoiced amounts within thirty (30) days of receipt of invoice.
14. **Termination.** Customer may terminate the Agreement only upon written notice to Company and payment to Company for all (i) services and Work rendered or performed to the effective date of such termination; (ii) materials, supplies and equipment purchased prior to the effective date of such termination; and (iii) costs incurred by Company because of such termination. To the extent that Company uses the materials, supplies, or equipment on other projects or for maintenance purposes, Customer will not be charged for them.
15. **Warranties.** Company shall perform the Work in a safe and professional manner in accordance with all applicable codes, standards, regulations, and laws. Company shall repair, replace, or correct to Customer's satisfaction all faulty or substandard work or defects in materials which appear within ninety (90) days from the date of completion of the Work. Acceptance of the Work or payment by Customer shall not affect this obligation. **THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL STATUTORY OR IMPLIED WARRANTIES (INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE).**
16. **Limitation of Remedies.** **IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL COMPANY BE LIABLE TO CUSTOMER FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE.** In no event whatsoever shall Company



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ever be liable to Customer for any damages or other amounts (including, without limitation, direct or actual damages), whether arising in contract or tort (including, without limitation, negligence) or otherwise, under or in connection with this Agreement or the Work, in an amount, in the aggregate, in excess of the total price paid for the Work; any and all claims for damages in excess of such amount being hereby forever waived and released by Customer; provided, however, that nothing contained in this sentence shall waive or limit any direct damages which Customer may suffer on account of Company's gross negligence or willful misconduct.

17. **Force Majeure.** Neither party will be liable to the other for any delay or failure to perform due to any cause beyond its reasonable control, including fire, flood, strike or other labor difficulty, act of God, or act of any governmental authority. The party experiencing the force majeure will notify the other party promptly, and appropriate adjustments will be negotiated. In the event of delay in performance due to force majeure, the date of delivery or time for completion will be extended by a period necessary to overcome the effect of such delay, provided that if such delay continues for 60 days the party not experiencing the force majeure may terminate this Agreement.
18. **Document Approval.** Company may request that Customer review documents developed by Company for conformity with Customer requirements or specifications. Unless Customer advises Company otherwise in writing within fifteen (15) days after Company's submission, Company may consider the documents approved and proceed with work. Changes, thereafter, made at the direction of Customer, will entitle Company to adjustment by change order.
19. **Documentation and Proprietary Information.** Customer will provide Company with accurate and complete information to permit Company to successfully undertake and complete the Work. Company shall not be prohibited from disclosure or use of proprietary or confidential information or documents necessary for Company to secure or maintain in effect any license or permit, or otherwise to complete the Work. Where Customer information is incomplete or incorrect, resulting in delay or extra work, Company will be entitled to adjustment by change order.
20. **Work Product.** All reports, drawings, plans, specifications, calculations, studies, software programs, tapes, models, and memoranda, if any, assembled or prepared by Company or Company's affiliates, independent professional associates, agents, consultants, contractors, or subcontractors pursuant to this Agreement are instruments of service in respect of the Work, and Company shall retain all ownership and property interest therein, whether or not the Work is completed. Customer may make and retain copies for information and reference in connection with the Work; *provided, however*, that it is understood and agreed that such documents are not intended to be re-used by Customer or others on extensions of the project or on any other project or any other purpose other than as expressly set forth in this Agreement, and Customer shall not re-use or disclose to any third party all or any portion of such work product without the express prior written consent of Company.
21. **Customer Facilities.** Company does not assume any responsibility for the adequacy, safety, or satisfactory performance of Customer's facilities. Customer shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Company and its officers, directors, agents, employees, and representatives from and against any and all losses, claims, damages, expenses (including attorneys' fees and costs) arising, for any reason whatsoever, out of the failure, non-operation or faulty performance of Customer's facilities (except to the extent of Company's gross negligence or willful misconduct).
22. **Subcontracting.** Company may subcontract any portion or all the Work without the approval of Customer.
23. **Independent Contractor.** Nothing contained in this Agreement, nor any acts of the parties shall be construed to create the relationship of principal and agent, or of limited or general partner, or of joint venture or of any association between or among the parties to this Agreement, except that of owner and independent contractor.
24. **Title; Rights of Access.** Customer warrants it has the authority to grant, and hereby grants to Company the right to enter and improve the real property for the purposes stated herein.
25. **Ownership.** Customer shall acquire no right, title, or interest in any portion of the Work or Company's equipment, or facilities placed in, on, over, through and/or under the real property by Company. The Work constructed and installed by Company on the real property of Customer shall be and mean the private property of Company, shall not be considered a fixture of the property, shall not attach to the realty, and shall not be alienable or lien able by



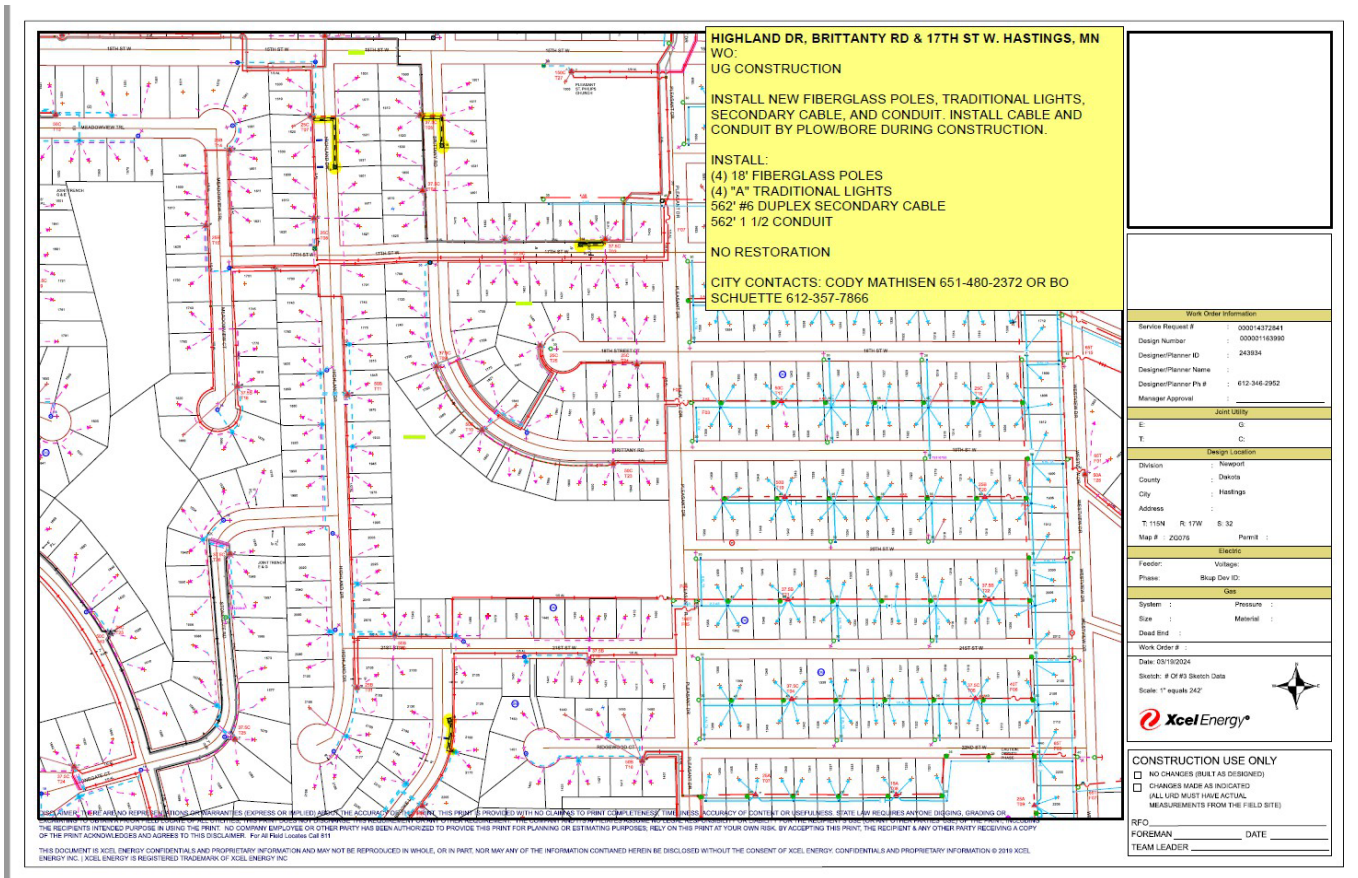


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Customer or any other party. Further, Company may remove, repair, and replace the Work and its component system and equipment at any time without notice in Company's sole and absolute discretion.

**26. Other.** It is agreed that failure by Customer or by Company at any time or from time to time to enforce any of the provisions of this Agreement shall not be construed to be a waiver of such provision or of Customer's right or Company's right, respectively, to thereafter enforce each provision hereof. This Agreement contains, with respect to the specific services to be performed by Company, the entire understanding of the parties, and shall supersede any other oral or written agreements and be binding upon and inure to the benefit of the parties' successors and assigns. This Agreement may not be modified in any way without the written consent of both parties. If any provision of this Agreement is determined by a court to be unenforceable, then such provision will be deemed invalid, but the remaining provisions shall be enforceable according to their terms. This Agreement shall be construed and interpreted in accordance with the internal laws of the State of Minnesota (as opposed to conflicts of law's provisions) as though all acts and omissions contemplated hereby or related hereto occurred in Minnesota. No course of prior dealing, usage of trade and course of performance shall be used to modify, supplement, or explain any terms of this Agreement. Neither Party will assign or otherwise transfer its rights or obligations hereunder, in whole or in part, without the advance written consent of the other. Notwithstanding the above, Company may assign its rights or obligations to any of its affiliates without the written consent of Customer.

**27. Governing Law.** The Terms and Conditions provided herein and the rights of all the parties hereunder shall be construed under and governed by the laws of the State of Minnesota.





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Work Order Information	
Service Request #	: 0001437284
Design Number	: 0003143990
Designer/Planner ID	: 243934
Designer/Planner Name	:
Designer/Planner Ph #	: 612-346-2952
Manager Approval	:
Joint Utility	
E:	G:
T:	C:
Design Location	
Division	: Street
County	: Dakota
City	: Hastings
Address	:
T: 115N	R: 17W
Map #	: 20076
Permit	:
Electric	
Feeder	: Village
Phase	: Wup Div ID:
System	: Voltage
Size	: Material
Dead End	:
Work Order #	
Draw	: 03/19/2024
Sheet	: # of #3 Sheet Data
Scale	: 1" equals 83'
CONSTRUCTION USE ONLY	
<input type="checkbox"/> NO CHANGES (MULTI AS DESIGNED)	
<input type="checkbox"/> CHANGES MADE AS INDICATED (ALL LOTS MUST HAVE ACTUAL MEASUREMENTS FROM THE FIELD SITE)	
RFO	DATE
FOREMAN	
TEAM LEADER	

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