



To: MAYOR AND CITY COUNCIL

Agenda Item #: VI. A.

From: Scott H. Neal, City Manager

Action

Discussion

Date: July 21, 2015

Information

Subject: Public Hearing for Proposed Xcel Energy Franchise

Action Requested:

Conduct Public Hearing for Proposed Xcel Energy Franchise

Information / Background:

On March 3, 2015, I presented the Council with a proposed process and engagement plan for renewal of the Xcel Energy franchise agreement. A copy of that process statement is attached to this memorandum.

A draft of the proposed franchise agreement was considered by the Energy & Environment Commission on May 14. The comments from the EEC were incorporated into the franchise proposal, including the creation of a proposed Memorandum of Understanding (MOU) called the Edina Clean Energy Partnership that is based on a similar MOU between Xcel Energy and the City of Minneapolis.

A two hour public open house was conducted on June 25 to enable members of the public with ideas, suggestions or concerns to share them at an early stage in the drafting of the agreement. There were no participants at the open house.

I reviewed the proposed franchise agreement with representatives from Xcel Energy on July 2. I will provide a summary of the company's position on each of the proposed material changes to the current franchise later in this document.

The process and engagement plan includes a public hearing on July 21 to allow interested members of the public one final opportunity to influence Council Members concerning the proposed franchise agreement. Following this public hearing, I request final direction from Council Members on areas of material change in order for the final draft of the ordinance to be prepared for consideration at your August 5, 2105 meeting.

Areas of Material Change in the Proposed Franchise Agreement

There are five areas of material change in the proposed franchise compared to the current franchise. I will describe each area, including the Xcel's response to the proposed change.

- I. 3.8.1 COMPANY SHALL PROVIDE CITY WITH A COMMUNITY-WIDE NETWORK OF FULLY FUNCTIONING STREET LIGHTS. COMPANY SHALL MAKE REASONABLE EFFORTS TO RESPOND AND REPAIR MALFUNCTIONING STREET LIGHTS WITHIN 48 HOURS OF NOTIFICATION BY CITY.

City: This is new language in the agreement. It is meant to strengthen the City's position when working with Xcel on the replacement of malfunctioning street lights.

Xcel: The Company says the language is redundant because the service requirement of repair within 48 hours is already part of their tariff requirements from the Minnesota Public Utilities Commission (PUC).

2. 3.8.2 COMPANY SHALL PROVIDE CITY THE LOCATION OF COMPANY OWNED STREET LIGHTS WITHIN THE CITY, TO BE UPDATED AT LEAST ANNUALLY.

City: This is new language in the agreement. The City spends \$340,00-\$370,000 each year on street lighting costs, yet we do not have an accurate inventory of what we are paying for. This provision will require Xcel to provide us an updated inventory of the street lights that we are paying for.

Xcel: The Company says they can do provide us this information at any time we ask for it.

3. 3.8.3 COMPANY SHALL UPGRADE, AT COMPANY COST, CITY'S NETWORK OF STREET LIGHTS TO LED STREET LIGHTS ON OR BEFORE JANUARY 1, 2018.

City: This is new language in the agreement. This provision requires the Company to upgrade the City's entire street lighting network to LED street lights on or before January 1, 2018. The cost of the upgrade is born by the Company.

Xcel: The Company agrees that it will be upgrading municipal street lights in many of its cities to LED during the requested time period, but has not yet established the order in which they will implement the upgrades.

4. 3.9.1 COMPANY AGREES THAT THE APPEARANCE OF ITS GROUND AND POLE MOUNTED EQUIPMENT WITHIN CITY PROPERTY, RIGHT-OF-WAY AND EASEMENT SHALL NOT BE ALLOWED TO BECOME VISUALLY DISPLEASING. COMPANY AGREES TO REMEDY VISUALLY DEFECTIVE EQUIPMENT WITHIN 90 DAYS, WEATHER PERMITTING, OF A REQUEST TO REMEDY FROM CITY.

City: This is new language for the franchise. The language is meant to address the condition of Xcel's ground and pole mounted equipment. Some of the Company's equipment is visually displeasing. This provision gives the City new authority to remedy visually defective equipment by providing the Company with 90 days to cure the defect.

Xcel: Xcel understands our concerns, but does not agree to this language. They believe the requirement to cure defects within 90 days is too burdensome.

5. 9.2.1 ENERGY CONSERVATION FEE. COMPANY AGREES TO ASSESS A \$0.50/MONTH CHARGE TO EACH CUSTOMER, REGARDLESS OF CUSTOMER CLASS, AND TO REMIT SUCH AMOUNT TO CITY AT THE SAME TIME AND METHOD AS THE FRANCHISE FEE, FOR THE PURPOSE OF FUNDING CITY'S ENERGY CONSERVATION PROGRAM.

City: This is new language for the agreement. The proposed Energy Conservation Fee (ECF) would function much like a utility franchise fee, except it is proposed as a flat fee across all classes of customers. The purpose of the ECF is to provide funding for the City's energy conservation program. I project the fee would produce approximately \$240,000 for energy conservation staffing and improvement projects throughout city government.

Xcel: The Company does not object to the ECF. However, they would expect the City to impose the same fee on CenterPoint Energy as well. The Company would treat the ECF as it would any franchise fee. They would show the charge as a line item on their customer bills, although they are not sure if they can show it as a separate line item charge or if they would need to combine it with the existing utility franchise fee.

In addition to the five areas of material change, the Energy & Environment Commission recommended the City enter into a Memorandum of Understanding with Xcel Energy to create the "Edina Clean Energy Partnership". The Edina Clean Energy Partnership (ECEP) is based on a similar agreement that Xcel has with the City of Minneapolis called the Minneapolis Clean Energy Partnership. The ECEP is intended to address a number of supplementary energy issues that cannot be included in the franchise agreement itself. I have included a draft copy of the proposed ECEP with the Council packet materials. Xcel does not wish to have a Clean Energy Partnership with the City of Edina. Xcel believes the Partners In Energy (PIE) program will adequately address the energy issues in the ECEP.

Recommendation

The July 21 Public Hearing will be the Council's first opportunity to review and comment on the proposed franchise. Up to this point, I have been managing the franchise renewal process. This is your opportunity to make this proposed franchise represent your values and policy choices.

If the Council can reach a consensus on a final franchise proposal, the City Attorney and I will draft it and formally present it to Xcel Energy for a response. City and Xcel staff will then discuss the proposed franchise until we can reach a mutual agreement, which will be in time for the Council to give the franchise ordinance final approval at your August 5 Council meeting.

Edina Clean Energy Partnership Memorandum of Understanding

This Memorandum of Understanding (the “Memorandum”), effective as of January 1, 2016, sets forth certain understandings and agreements among the City of Edina (the “City”), and Northern States Power Company d/b/a Xcel Energy, (“Xcel Energy”), each duly organized and existing under the laws of the State of Minnesota (each a “Party” and collectively the “Parties”) concerning cooperation and achievement of the City’s energy goals through a collaborative effort (the “Clean Energy Partnership”).

RECITALS

WHEREAS, the City Council adopted its Climate Action Plan (“the Plan”) in 2008, which seeks to reduce greenhouse gas emissions by 15% by 2015, 25% by 2025, and 80% by 2050, all from a 2006 baseline; and

WHEREAS, the Plan further provides for an increase in electricity from local and renewable energy sources consistent with the City’s Climate Action Plan goals, for significant energy efficiency improvements in the residential, commercial, and public sectors; for advancing equity in infrastructure and environmental benefits; and for assessing and building the resiliency of energy infrastructure in the City; and

WHEREAS, the City has adopted an Energy Vision, which provides that “in 2040, Edina’s energy system will provide reliable, affordable, local, and clean energy services for Edina homes, business, and institutions. It will sustain the city’s economy and environment and contribute to a more socially just community”; and

WHEREAS, the City has granted Xcel Energy a franchise to construct, install, enlarge, operate, repair and maintain in, on, over, under and across the streets, alleys and public grounds of the City, an electric distribution system and electric transmission lines for the purpose of transmitting electricity into, from and through the City and the City and Xcel Energy have negotiated the terms and conditions of a franchise to take effect January 1, 2016, in reliance upon this Memorandum; and

WHEREAS, Xcel Energy plays an important role in the City’s achievement of its energy goals;

WHEREAS, the City joined the ICLEI Climate Protection Campaign on November 5, 2007; and,

WHEREAS, the City joined the Minnesota Green Step Cities program on January 18, 2011; and,

WHEREAS, Xcel Energy has committed to cooperate with the City in support of the City’s efforts to achieve the City’s energy goals; and

WHEREAS, the Parties desire to set forth the terms and conditions of their collaborative efforts;

NOW, THEREFORE, BE IT RESOLVED THAT in consideration of the mutual obligations of the Parties hereto, which the Parties acknowledge constitutes adequate and sufficient consideration, each Party does hereby covenant and agree that the following provisions constitute the legally binding and enforceable agreement of the Parties.

1. **Orderly Planning.** The intent of this Memorandum is to facilitate the Parties' pursuit of the City's energy goals. Pursuant to the terms of this Memorandum, the Parties intend jointly and cooperatively to study, prioritize, plan, coordinate, implement as reasonably possible and permitted, market, track, and report progress on clean energy activities in the as described in Chapter 10 of the City's 2008 Comprehensive Plan (the "Work"). The Parties shall determine the tasks necessary to achieve these goals, direct the execution of tasks, and report the results of these tasks. The Parties shall harness available resources to advance the City's energy goals, and shall consider and prioritize the listing of goals.

2. **Leadership.** As a means to facilitate timely and orderly performance of the Work, there is hereby established a "Board" consisting of officials appointed by each Party as well as CenterPoint Energy. Xcel Energy shall each designate senior officials with the authority to bind the company to serve on the Board. The City shall designate elected officials and the City Coordinator to serve on the Board. Xcel Energy and CenterPoint Energy shall have an equal number of appointees. The number of appointees by the City shall equal the total number of appointees by Xcel Energy and CenterPoint Energy. Although each member of the Board serves at the pleasure of the appointing Party, the Parties acknowledge and agree upon the need to preserve continuity in the membership of the Board and to avoid disruption of the Work. At the first meeting of the Board, the members shall determine who shall chair the meetings, and the assignment of any other duties.

3. **Deliverables.** The Board shall determine the Work to be performed within a set timeframe, typically on a biennial basis (the "Work Plan"). The Work Plan for each time period shall detail the deliverables to be presented. The Parties will use their best efforts to achieve such deliverables. The Board will prepare a report on the Work performed and the results achieved on an annual basis. In prioritizing the Work to be performed in a specific Work Plan, the Board will consider the goals of the City's Climate Action Plan and Chapter 10 as well as regulatory requirements in Minnesota law. Options for the Board to consider in its Work are included in the attached Exhibit A.

4. **Meetings; Staffing.** The Board shall meet at least quarterly. The Parties each commit to provide staff and resources appropriate to complete the Work.

5. **Advisors.** The Board shall arrange opportunities for advocates and advisors, including representatives from critical communities within the City, such as business, neighborhoods, environmental justice, technical, and City staff, to provide information and materials to the Board. In order to facilitate the transmittal of such information to the Board, the Board shall appoint members representing these critical communities to a standing advisory committee which shall be charged with reviewing and providing feedback on the biennial work plan and measurement and performance reports; researching special initiatives as requested by the Board; and, providing outreach and promotion of Board initiatives as directed by the Board. Ad hoc advisory committees may be established by the Board at its discretion.

6. **Authority; Cooperation.** The Parties acknowledge and agree that each Party has the requisite power and authority to execute and carry out the terms and provisions of this

Memorandum. To the Parties' knowledge, except for the City Council of the City of Edina, no consent, authorization or approval by any governmental or public body or authority is required in connection with the execution and performance by each of the Parties of this Memorandum. The Parties recognize that future action taken by Xcel Energy to support the City's energy goals may be subject to state regulatory utility requirements in Minn. Stat. Chapters 216B, 216C and other applicable laws and regulations. If the Parties agree on certain actions in support of the City's energy goals that require state regulatory approval, they agree to cooperatively work together to seek necessary approvals or regulatory changes to facilitate such regulatory approvals.

7. Termination. This Memorandum shall automatically terminate upon termination or expiration of a City franchise with Xcel Energy. This Memorandum may be terminated by either Party upon sixty days written notice to the other Parties.

8. Ordinances. Nothing in this Memorandum constitutes a waiver of the City ordinances or the City's regulatory jurisdiction or the State's utility regulatory jurisdiction.

9. Binding Obligation. This Memorandum will inure to the benefit of the Parties hereto and shall be binding on them and their respective legal representatives, successors, and assigns. Provided, however, no Party hereto may assign any of its rights herein to any person without the prior written consent of the other Parties which shall not be unreasonably withheld.

10. Entire Memorandum. This Memorandum constitutes the entire agreement between the Parties and supersedes all prior oral or written agreements, understandings, representations, and warranties relating to the subject matter of this Memorandum. All exhibits, attachments, and recitals referred to in this Memorandum are incorporated and deemed to be part of this Memorandum. Any changes or waivers of provisions of this Memorandum shall only be valid when they have been reduced to writing and signed by the Parties as an amendment to this Memorandum. Headings are provided for convenience and are not a part of this Memorandum.

11. Governing Law. This Memorandum will be governed by and construed in accordance with the laws of the State of Minnesota (exclusive of conflicts of law principles). Nothing in this Memorandum limits or waives the rights or limits provided to the City as a municipality under Minnesota Statutes Chapter 466. Nothing in this Memorandum limits or waives the rights or limits provided to Xcel Energy as a utility under Minn. Stat. Chapter 216B, 216C and other applicable laws and regulations.

12. No Presumption Against Drafter. This Memorandum has been negotiated at arm's length and between Parties sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Memorandum shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against a Party responsible for drafting any part of this Memorandum.

13. No Joint Venture or Partnership. It is agreed that nothing in this Memorandum shall be deemed or construed as creating a joint venture, trust, partnership, or any similar legal relationship among the Parties. Each Party shall be responsible for its own obligations under this Memorandum.

14. For the Benefit of Parties Only. This Memorandum is for the benefit of the signing Parties only. There are no third party rights created by this Memorandum and there are no third party beneficiaries entitled to the benefits of this Memorandum.

15. Notice. Any notice permitted or required by this Memorandum shall be made in writing and personally served or mailed (postage prepaid, return receipt requested) and shall be effective upon the date of personal service, or if by mail, upon the date of receipt. The address for notice to each Party is as follows (as may be later changed by a Party by proper notice):

If to the City of Edina:

If to Xcel Energy:

16. Current Regulatory Framework: Program costs and customer incentives offered by Xcel Energy to its customers in Edina which extend beyond the scope of programs offered to all Xcel Energy customers as approved by the MPUC and/or DOC, shall be the responsibility of Edina. The Parties recognize that the programs and incentives approved by the MPUC and/or DOC may include pilot programs offered to customers in Edina and the costs of these pilot programs will not be charged separately to Edina customers unless directed by the MPUC and/or DOC.

17. Counterparts. This Memorandum may be executed in any number of counterparts which, taken together, shall constitute one and the same instrument. IN WITNESS WHEREOF, this Memorandum has been signed by an officer duly authorized on behalf of the Parties hereto, all on the date first above written.

CITY OF EDINA

By _____
Its _____

XCEL ENERGY

By _____
Its _____

Exhibit A: Clean Energy Partnership Memorandum of Understanding

The ideas and concepts included in this exhibit represent a non-exclusive menu of options for the Partnership Board to consider in planning its work. It is not intended to be a detailed work plan. In prioritizing the Work to be performed in a specific Work Plan, the Board will consider the goals of the Climate Action Plan and Chapter 10 energy and environment goals, such as:

City and customers can use energy information to make decisions, plan actions to the extent state or federal law or regulatory authority allows;

- Aggregated usage and program participation data
- Information regarding the reliability of service in the City as a whole, and to the extent feasible, geographic areas within the City

Understand grid strengths and weaknesses;

- Understanding expected and potential grid investments with the City necessary to support reliability and the operation of distributed resources such as distributed generation, energy efficiency and demand response
- Understanding the potential for distributed energy resources within the City
- Understanding opportunities for the undergrounding or otherwise changing the design and impact of overhead grid infrastructure, as appropriate

Reducing energy costs to businesses, the public;

- Energy efficiency program offerings for government-owned buildings
- Energy efficiency program offerings for small and large business
- Energy efficiency program offerings for the hospitality industry
- Operational Energy Savings Certification Program

Addressing equity of services by reducing residential and multi-family energy costs;

- Energy efficiency program offerings for multi-family buildings
- Neighborhood-focused program delivery
- Energy Performance Certification program
- Green Zone concept

Increasing economic and job development/training;

- District energy service enhancement
- Energy efficiency program offerings for small and large business
- Green Zone concept
- Neighborhood-focused program delivery
- Energy Savings Certification program

Meeting Plan goals for reduced greenhouse gas emissions from City enterprise, including public buildings;

- Electronic billing for all city accounts
- Optimize LED streetlight opportunities
- Explore demand response opportunities
- Standard process for interconnecting DG resources

Meeting Plan goals for renewable energy usage;

- Solar development for the benefit of the City and other Edina consumers
- Additional green choices for the City and other Edina consumers, including piloting innovative options
- Continue to explore CHP opportunities
- Biogas development for city fleet

06/22/15 PROPOSED ELECTRIC FRANCHISE ORDINANCE

ORDINANCE NO. _____.

CITY OF EDINA, HENNEPIN COUNTY, MINNESOTA

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, D/B/A XCEL ENERGY, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF EDINA, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY, ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.

THE CITY COUNCIL OF THE CITY OF EDINA, HENNEPIN COUNTY, MINNESOTA, ORDAINS:

SECTION 1. DEFINITIONS.

For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

- 1.1 **City.** The City of Edina, County of Hennepin, State of Minnesota.
- 1.2 **City Utility System.** Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.
- 1.3 **Commission.** The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all, or part of the authority to regulate electric retail rates now vested in the Minnesota Public Utilities Commission.
- 1.4 **Company.** Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, its successors and assigns.
- 1.5 **Electric Facilities.** Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company for the purpose of providing electric energy for public use.
- 1.6 **Notice.** A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 414 Nicollet Mall, 5th Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, City Hall, 481 West 50th Street, Edina, MN 55424. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.
- 1.7 **Public Ground.** Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.

1.8 **Public Way.** Any street, alley, walkway or other public right-of-way within the City.

SECTION 2. ADOPTION OF FRANCHISE.

2.1 **Grant of Franchise.** City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the right to transmit and furnish electric energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Grounds and Public Ways of City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance and to the further provisions of this franchise agreement.

2.2 **Effective Date; Written Acceptance.** This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City, by Council resolution, may revoke this franchise agreement if Company does not file a written acceptance with the City within 90 days after publication.

2.3 **Service and Rates.** The service to be provided and the rates to be charged by Company for electric service in City are subject to the jurisdiction of the Commission. The area within the City in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Section 216B.40.

2.4 **Publication Expense.** The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.

2.5 **Dispute Resolution.** If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the 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. If a mediator is not used, or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

SECTION 3. LOCATION, OTHER REGULATIONS.

3.1 **Location of Facilities.** Electric Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Electric Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Electric Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground

Electric Facilities in place, provided at the City's request, Company will remove abandoned metal or concrete encased conduit interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project.

3.2 Field Locations. Company shall provide field locations for its underground Electric Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.

3.3 Street Openings. Company shall not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Electric Facilities. In such event Company shall notify the City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.

3.4 Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for one year thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.4, but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.

3.5 Avoid Damage to Electric Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity.

3.6 Notice of Improvements. The City must give Company reasonable notice of plans for improvements to Public Grounds or Public Ways where the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Grounds and Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Ground or Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Electric Facilities.

3.7 Shared Use of Poles. Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities upon terms and conditions acceptable to Company

whenever such use will not interfere with the use of such poles or towers by Company, by another electric utility, by a telephone utility, or by any cable television company or other form of communication company. In addition, the City shall pay for any added cost incurred by Company because of such use by City.

SECTION 3.8 STREET LIGHTING

3.8.1 COMPANY SHALL PROVIDE CITY WITH A COMMUNITY-WIDE NETWORK OF FULLY FUNCTIONING STREET LIGHTS. COMPANY SHALL MAKE REASONABLE EFFORTS TO RESPOND AND REPAIR MALFUNCTIONING STREET LIGHTS WITHIN 48 HOURS OF NOTIFICATION BY CITY.

3.8.2 COMPANY SHALL PROVIDE CITY THE LOCATION OF COMPANY OWNED STREET LIGHTS WITHIN THE CITY, TO BE UPDATED AT LEAST ANNUALLY.

3.8.3 COMPANY SHALL UPGRADE, AT COMPANY COST, CITY'S NETWORK OF STREET LIGHTS TO LED STREET LIGHTS ON OR BEFORE JANUARY 1, 2018.

SECTION 3.9 COMPANY EQUIPMENT

3.9.1 COMPANY AGREES THAT THE APPEARANCE OF ITS GROUND AND POLE MOUNTED EQUIPMENT WITHIN CITY PROPERTY, RIGHT-OF-WAY AND EASEMENT SHALL NOT BE ALLOWED TO BECOME VISUALLY DISPLEASING. COMPANY AGREES TO REMEDY VISUALLY DEFECTIVE EQUIPMENT WITHIN 90 DAYS, WEATHER PERMITTING, OF A REQUEST TO REMEDY FROM CITY.

SECTION 4. RELOCATIONS.

4.1 Relocation of Electric Facilities in Public Ways. If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Electric Facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Except as provided in Section 4.3, Company shall relocate its Electric Facilities at its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Electric Facilities, which was made at Company expense, the City shall reimburse Company for non-betterment costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate, remove, replace or reconstruct at its own expense its Electric Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

4.2 Relocation of Electric Facilities in Public Ground. City may require Company, at Company's expense, to relocate or remove its Electric Facilities from Public Ground upon a finding by City that the Electric Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.

4.3 Projects with Federal Funding. City shall not order Company to remove or relocate its Electric Facilities when a Public Way is vacated, improved or realigned for a right-of-way project or any other project which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation are first paid to Company. The City is obligated to pay Company only for those portions of its relocation costs for which City has received federal funding specifically allocated for relocation costs in the amount requested by the Company, which allocated funding the City shall specifically request. Relocation, removal or rearrangement of any Company Electric Facilities made necessary because of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the rights herein granted to Company are valuable rights.

4.4 No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or Company's rights under state or county permit.

SECTION 5. TREE TRIMMING.

Company may trim all trees and shrubs in the Public Grounds and Public Ways of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that Company shall save the City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City.

SECTION 6. INDEMNIFICATION.

6.1 Indemnity of City. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Electric Facilities located in the Public Grounds and Public Ways. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner, of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

6.2 Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will

thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City and Company, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

SECTION 7. VACATION OF PUBLIC WAYS.

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. Except where required for a City improvement project, the vacation of any Public Way, after the installation of Electric Facilities, shall not operate to deprive Company of its rights to operate and maintain such Electric Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

SECTION 8. CHANGE IN FORM OF GOVERNMENT.

Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

SECTION 9. FRANCHISE FEE.

9.1 **Fee Schedule.** During the term of the franchise hereby granted, and in lieu of any permit or other fees being imposed on Company, the City may impose on Company a franchise fee by collecting the amounts indicated in a Fee Schedule set forth in a separate ordinance from each customer in the designated Company Customer Class. The parties have agreed that the franchise fee collected by the Company and paid to the City in accordance with this Section 9 shall not exceed the following amounts.

<u>Class</u>	<u>Fee Per Premise Per Month</u>
Residential	\$ _____
Sm C & I – Non-Dem	\$ _____
Sm C & I – Demand	\$ _____
Large C & I	\$ _____
Public Street Ltg	\$ _____
Muni Pumping –N/D	\$ _____
Muni Pumping – Dem	\$ _____

9.2 **Separate Ordinance.** The franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least 90 days after written notice enclosing such proposed ordinance has been served upon Company by certified mail. The fee shall not become effective until the beginning of a Company billing month at least 90 days after written notice enclosing such adopted ordinance has been served upon Company by certified mail. Section 2.5 shall constitute the sole remedy for solving disputes between Company and the City in regard to the interpretation of, or enforcement of, the separate ordinance. No action by the City to implement a separate ordinance will commence until this Ordinance is effective. A separate ordinance which imposes a lesser franchise fee on the residential class of customers than the maximum amount set forth in Section 9.1 above shall not be effective against Company unless the fee imposed on each other customer classification is reduced proportionately in the same or greater amount per class as the reduction represented by the lesser fee on the residential class.

9.2.1 ENERGY CONSERVATION FEE. COMPANY AGREES TO ASSESS A \$0.50/MONTH CHARGE TO EACH CUSTOMER, REGARDLESS OF CUSTOMER CLASS, AND TO REMIT SUCH AMOUNT TO CITY AT THE SAME TIME AND METHOD AS THE FRANCHISE FEE, FOR THE PURPOSE OF FUNDING CITY'S ENERGY CONSERVATION PROGRAM.

9.3 **Terms Defined.** For the purpose of this Section 9, the following definitions apply:

9.3.1 “Customer Class” shall refer to the classes listed on the Fee Schedule and as defined or determined in Company’s electric tariffs on file with the Commission.

9.3.2 “Fee Schedule” refers to the schedule in Section 9.1 setting forth the various customer classes from which a franchise fee would be collected if a separate ordinance were implemented immediately after the effective date of this franchise agreement. The Fee Schedule in

the separate ordinance may include new Customer Class added by Company to its electric tariffs after the effective date of this franchise agreement.

9.4 **Collection of the Fee.** The franchise fee shall be payable quarterly and shall be based on the amount collected by Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee for the applicable customer classification in all customer billings for electric service in each class. The payment shall be due the last business day of the month following the period for which the payment is made. The franchise fee may be changed by ordinance from time to time; however, each change shall meet the same notice requirements and not occur more often than annually and no change shall require a collection from any customer for electric service in excess of the amounts specifically permitted by this Section 9. The time and manner of collecting the franchise fee is subject to the approval of the Commission. No franchise fee shall be payable by Company if Company is legally unable to first collect an amount equal to the franchise fee from its customers in each applicable class of customers by imposing a surcharge in Company's applicable rates for electric service. Company may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles, refunds and correction of erroneous billings. Company agrees to make its records available for inspection by the City at reasonable times provided that the City and its designated representative agree in writing not to disclose any information which would indicate the amount paid by any identifiable customer or customers or any other information regarding identified customers.

9.5 **Equivalent Fee Requirement.** The separate ordinance imposing the fee shall not be effective against Company unless it lawfully imposes and the City monthly or more often collects a fee or tax of the same or greater equivalent amount on the receipts from sales of energy within the City by any other energy supplier, provided that, as to such a supplier, the City has the authority to require a franchise fee or to impose a tax. The "same or greater equivalent amount" shall be measured, if practicable, by comparing amounts collected as a franchise fee from each similar customer, or by comparing, as to similar customers the percentage of the annual bill represented by the amount collected for franchise fee purposes. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling or lighting, or to run machinery and appliances, but shall not apply to energy sales for the purpose of providing fuel for vehicles. If the Company specifically consents in writing to a franchise or separate ordinance collecting or failing to collect a fee from another energy supplier in contravention of this Section 9.5, the foregoing conditions will be waived to the extent of such written consent.

SECTION 10. PROVISIONS OF ORDINANCE.

10.1 **Severability.** Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

10.2 **Limitation on Applicability.** This Ordinance constitutes a franchise agreement between the City and Company as the only parties, and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

SECTION 11. AMENDMENT PROCEDURE.

Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

SECTION 12. PREVIOUS FRANCHISES SUPERSEDED.

This franchise supersedes any previous electric franchise granted to Company or its predecessor.

Passed and approved: _____, 2015.

Mayor

Attest:

City Clerk

Date Published: _____

Process and Engagement Statement: Xcel Energy Franchise Renewal

Mission: To create a new franchise agreement by and between Xcel Energy and the City of Edina.

Completion: The process will be complete when the City Council has adopted the new franchise ordinance on August 5, 2015.

Role of Council Members in Process: Provide input during Phase 1, but to refrain from participating in the process until the proposed renewal ordinance is presented to the Council for first reading in October.

Lead Facilitator: Scott Neal, City Manager

Key Staff Participants: Ross Bintner, Environmental Engineer
Patrick Wrase, Assistant City Engineer
Debra Mangan, City Clerk

Lead Commission: Energy & Environment Commission

Timeline:

April 2015	Staff prepares recommendations and seeks input from Council Members
May 2015	Staff seeks input from EEC; Staff prepares draft franchise renewal ordinance
June 2015	Boards & Commissions provide Review & Comment input on draft ordinance; Staff and EEC host open house meeting to solicit public input on draft ordinance
July 2015	Staff synthesizes input and feedback into revised draft ordinance
July 21, 2015	Staff presents the revised draft ordinance to City Council; Council hosts public hearing on revised draft ordinance;
Aug 5, 2015	Council considers first reading and second/final reading ordinance; new ordinance is presented to Xcel Energy and Public Utilities Commission
Nov 16, 2015	New franchise ordinance becomes effective