

## **ACTION TRANSMITTAL 2014-08**

**DATE:** January 29, 2014  
**TO:** Technical Advisory Committee  
**FROM:** TAC Funding and Programming Committee  
**PREPARED BY:** Heidi Schallberg, Senior Planner (651-602-1721)  
**SUBJECT:** Program Year Extension Request: Black Dog Greenway  
**REQUESTED ACTION:** The City of Burnsville requests a program year extension for the Black Dog Greenway (SP# 179-090-004) to 2015.  
**RECOMMENDED MOTION:** Recommend that the Transportation Advisory Board approve the program year extension request to move the Black Dog Greenway (SP# 179-090-004) to 2015.

**BACKGROUND AND PURPOSE OF ACTION:** The City of Burnsville received \$1,040,000 in federal Transportation Enhancements (now Alternatives) funds in the 2009 solicitation for construction of the Black Dog Greenway in 2014. The trail construction is related to a conversion of the Black Dog Power Plant from coal to natural gas, and the power plant plans have taken longer than expected. To avoid potential power plant construction and remediation from damaging the trail, the city is requesting a one-year program year extension. The city's request is attached.

**RELATIONSHIP TO REGIONAL POLICY:** The Transportation Advisory Board (TAB) adopted the Program Year Policy in April 2013 to assist with management and timely delivery of transportation projects awarded federal funding through the TAB's regional solicitation. The policy includes a procedure to request a one-year extension based on extenuating circumstances within certain guidelines.

**STAFF ANALYSIS:** MnDOT State Aid staff has indicated their support for the project sponsor's request. Based on the city's work on the project and the nature of the delay, staff recommends approval of the program year extension to 2015. It is important to note that an extension of the program year does not guarantee federal funding will be available in that year, and the project sponsor is responsible for funding the project until federal funding becomes available. The program year change would be administered in the annual Transportation Improvement Program (TIP) update and does not require a separate TIP amendment.

**COMMITTEE COMMENTS AND ACTION:** The Funding and Programming Committee unanimously recommended approval of this program year extension request at its January 16, 2014, meeting. Since this was the first use of the new program year extension request process and form, the committee discussed re-evaluating the scoring used on the request form.

---

**ROUTING**

<b>TO</b>	<b>ACTION REQUESTED</b>	<b>DATE COMPLETED</b>
TAC Funding & Programming Committee	Review & Recommend	January 16, 2014
Technical Advisory Committee	Review & Recommend	
Transportation Advisory Board	Review & Approve	



December 18, 2013

Mr. Karl Keel P.E.  
Chair, TAC Funding and Programming Committee  
Metropolitan Council  
390 Robert Street North  
St. Paul, MN 55101

Re: Program Year Extension  
S.P. 179-090-004  
Black Dog Greenway  
Burnsville, Dakota County, Minnesota

Dear Mr. Keel:

The City of Burnsville respectfully requests that the Metropolitan Council TAC Funding and Programming Committee consider a one year Program Year Extension for the above referenced project.

The primary reasons for the Program Year Extension include:

- The Black Dog Greenway is located on property owned by Xcel Energy. Since the property is owned by Xcel Energy, the construction timeline for this project is tied into the timing of an anticipated conversion of the Black Dog Power Plant from coal to natural gas. Logistically, the trail construction needs to follow the conversion of the power plant, so that construction and coal site remediation activities at the plant will not damage the new trail. This timing element was noted in the 2009 grant application.
- Xcel Energy has been working with the MN Public Utilities Commission since 2011 to determine the future power needs for the region and the best use of the facilities at the Black Dog Plant. This discussion has taken much longer than expected, and the repowering plans for the Black Dog Power Plant have just recently come into focus. This has delayed the construction timeline for the work scheduled for the Black Dog Power plant and subsequently construction of the trail.
- Xcel has recently completed a remediation plan for the site, and it is anticipated this plan will be approved by the MPCA by July, 2014. A one-year extension will allow trail construction to follow the remediation and other construction work at the plant, which is scheduled for 2015.

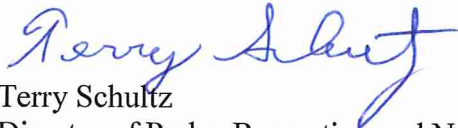
Letter to Mr. Karl Keel  
December 18, 2013  
Page two

- The City of Burnsville did not wait to start activities on the project even though final decisions for Xcel's repowering and remediation plan had not been completed. Burnsville staff began working to secure the necessary easements and developing preliminary design plans for this project in April of 2012. A draft Project Memo was prepared and was reviewed by MnDOT and FHWA in January, 2013. Finalizing the Project Memo was put on hold pending decisions that needed to be made by Xcel regarding their site plans, which ultimately impacted the location of the trail. The proposed trail location has now been finalized and the anticipated approval date for the Project Memorandum is February, 2014.
- Xcel and the City executed a Development Contract in 2012 that requires dedication of the required trail easements. Xcel has agreed to the final easements pending approval of their remediation plan by the MPCA in July of 2014.
- There is considerable excitement about the prospect of this trail project moving forward. The City of Burnsville, Dakota County and the U.S. Fish and Wildlife Service have all committed their financial support to make this trail a reality. The City is very confident that it will be able to move forward with this project within the timeframe of a one-year extension, if granted.

The enclosed information provides details on our request. If you have any questions or require any additional information please contact me at (952) 895-4505 or [terry.schultz@ci.burnsville.mn.us](mailto:terry.schultz@ci.burnsville.mn.us).

Sincerely,

CITY OF BURNSVILLE

  
Terry Schultz  
Director of Parks, Recreation and Natural Resources

Enclosures

**REQUEST FOR PROGRAM YEAR EXTENSION**  
**S.P. 179-090-004**  
**Black Dog Greenway**  
**Burnsville, Dakota County, Minnesota**

**1. PROJECT BACKGROUND**

a) **Project Name:**

Black Dog Greenway (from I-35W to TH 77) in the City of Burnsville

b) **Location Map:**

A location map is attached as **Figure 1**.

c) **Sponsoring Agency:**

City of Burnsville

d) **Other Participating Agencies:**

Dakota County, MnDOT, FHWA, US Fish and Wildlife, Xcel Energy

e) **Project Description:**

The Dakota County master plan for the Minnesota River Greenway provides 17 miles of trail linking Burnsville, Eagan, Mendota Heights, Mendota and Lilydale. Once in Lilydale, it connects to Lilydale Regional Park and its numerous amenities. The Black Dog Greenway is an approximately 3.75 mile segment of the Minnesota River Greenway. This segment of trail is located within the US Fish and Wildlife Service's Minnesota Valley National Wildlife Refuge and property owned by Xcel Energy. The Black Dog Greenway will provide the connection from 35W to TH 77.

f) **Funding Category:**

The project is funded with Federal Transportation Enhancement (TE) funds.

g) **Federal Funds Allocated:**

Federal funds in the amount of \$1,040,000 have been secured for Fiscal Year 2014.

**2. PROJECT PROGRESS**

a) **Project Schedule:**

Program Schedule for Program Year Extension is attached as **Attachment 1**.

b) **Right-of-Way Acquisition:**

The project will require temporary and permanent easements from Xcel Energy (refer to **Figure 1** for trail location) the entire project is located within Xcel energy property. The City and Xcel currently have an executed Development Agreement (**Attachment 2**) and a draft Trail Easement Agreement (**Attachment 3**). Section 7 (sheet 9 of 15) of the Development Agreement specifies the trail easement dedication and exhibit G shows the approximate alignment. The draft Trail Easement Agreement has been

reviewed by Xcel and City attorneys and will be executed upon the completion of the following items:

1. Xcel Response Action Plan (RAP) is approved
2. Revise alignment of the trail through the RAP area if needed
3. Produce easement legal descriptions and plat for execution of the trail easement agreement

**c) Plans:**

**Figure 2** provides a general trail location layout with the trail alignment sections noted as complete or pending Xcel RAP approval. The trail alignment and profile have been completed for the trail sections from 35W to the Xcel Power Plant (2.15 miles) and from TH77 west 0.75 miles, totaling 2.9 miles of the 3.75 mile project. It is estimated that the project plan is currently 20 percent complete. The alignment of the trail through the RAP section (0.87 miles) has been discussed with Xcel and will begin preliminary design with final design pending RAP approval.

**d) Permits:**

The following table is a list of anticipated permitting agencies and the status of their reviews:

<b>Permits Required</b>	
<b>Agency/Permit</b>	<b>Status</b>
USACE Section 404	Permit will be obtained prior to construction.
DNR - Public Waters	Permit will be obtained prior to construction.
MPCA - NPDES	Permit will be obtained prior to construction.
MPCA - Section 401	Permit will be obtained prior to construction.
Wetland /BWSR	Permit will be obtained prior to construction.
U.S. Fish & Wildlife	Permit/agreement will be obtained prior to construction.
Xcel Energy	Agreement will be obtained prior to construction.
City of Burnsville	A Conditional Use Permit will be obtained prior to construction.

**e) Approvals:**

During the preparation of the project memorandum (PM) support letters were received from the following agencies: U.S. Fish & Wildlife Service, Xcel Energy and Dakota County. In 2012, the wetland delineation report was completed and has been sent to the following agencies: Corps of Engineers, Department of Natural Resources, Lower Minnesota River Watershed District and Coast Guard.

The following is a list of agencies with approval authority and the status of each approval:

<b>Agency</b>	<b>Approval Required</b>	<b>Status</b>
Federal Highway Administration	Project Memorandum	Initial review completed, Approval February 2014
	Net Benefit 4(f) Evaluation	Initial review completed
	Final Plan Approval	Not yet submitted, June 2014
MnDOT	Project Memorandum	Initial review completed, Approval February 2014
	Net Benefit 4(f) Evaluation	Initial review completed
	Final Plan Approval	Not yet submitted, June 2014
Dakota County	Preliminary Alignment	Completed
	Final Plan Approval	June 2014
City of Burnsville	Preliminary Alignment	completed
	Final Plan Approval	June 2014

**f) Identified Funds Spent to Date on Project:**

To date the City has spent funds in excess of \$105,000 on preliminary design, the preparation of the project memorandum and Section 4(f) Net Benefits documents, wetland delineation and city coordination of the design, project memorandum and discussions with Xcel. Attorney's fees have also been spent on the development agreement and draft trail easement with Xcel.

**3. JUSTIFICATION FOR EXTENSION**

**a) What is unique about this project that requires an extension of the program year?**

The Black Dog Greenway is located within the US Fish and Wildlife Service's Minnesota Valley National Wildlife Refuge and property owned by Xcel Energy. Since the property is owned by Xcel Energy, the construction timeline for this project has always been tied into the timing of an anticipated conversion of the Black Dog Power Plant from coal to natural gas. Logistically, the trail construction needs to follow the conversion of the power plant, so that construction and coal site remediation activities at the plant will not damage the new trail. This timing element was noted in the 2009 grant application.

Xcel Energy has been working with the MN Public Utilities Commission since 2011 to determine the future power needs for the region and the best use of the

facilities at the Black Dog Plant. This discussion has taken much longer than expected, and the repowering plans for the Black Dog Power Plant have just recently come into focus. This has delayed the construction timeline for the work scheduled for the Black Dog Power plant and subsequently construction of the trail.

City of Burnsville staff began working to secure the necessary easements and developing preliminary design plans for this project in April of 2012. Since then, there have been a number of delays due to pending decisions on the conversion of the plant. Many of these decisions have now been made and the City has spent much of 2013 revising the project memo and finalizing the trail alignment and profile. Xcel has recently completed a remediation plan for the site, and it is anticipated this plan will be approved by the MPCA by July of 2014. A one year extension will allow trail construction to follow the remediation and other construction work at the Plant, which is scheduled for 2015.

Xcel has committed to providing the necessary easements for the trail and the matching funds are in place for this project to move forward. The City is very confident that it will be able to move forward with this project within the timeframe of a one year extension, if granted.

**b) What are the financial impacts if this project does not meet its current program year?**

If federal funds are surrendered, the trail construction will be postponed until an alternate source of funding can be secured. Additionally, some of the funding expended to date could become lost if funding cannot be secured in a timely manner. The city has spent funds in excess of \$105,000. The city's funds were utilized to complete the wetland delineation, project memorandum and preliminary design. The wetland delineation, project memorandum and Section 4(f) net benefits will likely have to be redone by the time an alternate source of funding is secured.

**c) What are the implications if the project does not obtain the requested extension?**

An extension of the program year is critical to allow time for Xcel Energy's Black Dog Power Plant to obtain approval for the Response Action Plan for the remediation of the coal site where the proposed trail will be located. Logistically, the trail construction needs to follow the conversion of the power plant, so that construction and coal site remediation activities at the plant will not damage the new trail. This timing element was noted in the 2009 grant application.

If the extension is not granted the City would forfeit the TE funding on the project and postpone the project until funding can be obtained. Postponing the project until an unknown future date would complicate the agreement process between the City and Xcel Energy, render useless the majority of the work done to date, and be very inefficient. Furthermore, postponing leaves a gap in



the City/County/Regional trail and bike system and would put the funding secured from some of the partnering agencies at risk.

The Black Dog Trail will connect two important river crossings that are planned/funded to be completed in the next 5 years. City of Bloomington will be rehabilitating the Old Cedar Avenue Bridge in 2015-2016 providing a direct connection between the Black Dog Trail and the Mall of America. MnDOT is planning to replace the I-35W Bridge over the Minnesota River in the 2018-2020 time period. Completion of the new I-35W bridge will provide pedestrian crossing that will connect the Black Dog Trail to West Bloomington. Both connections will be important to the overall vision of recreation/access to and across the Minnesota River Valley.

**d) What actions will the agency take to resolve the problem facing the project in the next three to six months?**

Xcel Energy has recently completed a remediation plan (RAP) for the site, and it is anticipated this plan will be approved by the MPCA by July of 2014. Once the RAP is approved the final alignment through the RAP area can be verified and finalized in the construction documents.

The project memorandum and Section 4(f) net benefits are currently being updated. Submittal of these documents back to MnDOT and FHWA is anticipated in February. Since the documents were previously submitted, any further comments are anticipated to be minor.

The trail design and construction plan development is underway. The construction plan is being developed with the anticipated alignment through the RAP area and will only require modification if the MPCA has comments during their review.

Figure 1: Location Map



Date Printed: 12/02/2013  
File Name: M:\0805-80\Cad\Exhibits\880-18 Figure 1- yr ext.dgn

**Black Dog Greenway**  
City of Burnsville, Minnesota  
S.P. 179-090-004



Figure 1  
Location Map





STUDY REPORT (required for Environmental Assessment Only)

Complete/Approved If checked enter 1. \_\_\_\_\_  
Date of Approval \_\_\_\_\_  
 Not Complete  
Anticipated Date of Completion \_\_\_\_\_

CONSTRUCTION PLANS

Completed (includes signature of District State Aid Engineer)  
Date \_\_\_\_\_ If checked enter 3. \_\_\_\_\_  
 Completed (approved by District State Aid as to SA Standards but not signed)  
Date \_\_\_\_\_ If checked enter 2. \_\_\_\_\_  
 Not Complete  
Anticipated Date of Completion June 2014  
If prior to June 30<sup>th</sup> of the program year, enter 1. 1

RIGHT OF WAY ACQUISITION

Completed (includes approval of R/W Cert. #1 or #1A) If checked enter 2. \_\_\_\_\_  
Date \_\_\_\_\_  
 Not Complete  
Anticipated Date of Completion June 2014  
If prior to December 31<sup>st</sup> of the year following the original program year, enter 1. 1

ENGINEERS ESTIMATE OF COSTS

Completed If checked enter 2. \_\_\_\_\_  
Date \_\_\_\_\_  
 Not Complete  
Anticipated Date of Completion June 2014  
If prior to December 31<sup>st</sup> of the year following the original program year, enter 1. 1

AUTHORIZED

Anticipated Letting Date January 2015.  
Anticipated letting date must be prior to June 30  
in the year following the original program year,  
so that authorization can be completed prior to  
June 30 of the extended program year.

TOTAL POINTS 8

**Attachment 2**  
**Development Agreement**  
**(City of Burnsville and Xcel Energy)**

*(reserved for recording information)*

**XCEL ENERGY BLACK DOG POWER PLANT  
ROAD ACCESS IMPROVEMENTS/ASSESSMENT AND DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** ("Agreement") is dated \_\_\_\_\_, 2012, by and between the **CITY OF BURNSVILLE**, a Minnesota municipal corporation ("City"), and **NORTHERN STATES POWER COMPANY**, a Minnesota corporation, **D/B/A XCEL ENERGY** ("Xcel Energy"). Xcel Energy and the City desire to ensure unrestricted access to Xcel Energy's Black Dog Power Plant (the "Plant"), minimize impacts to existing and future Plant operations, and reduce the Plant's traffic impacts on neighborhoods and resources. Unless specifically addressed in this Agreement, all rights and obligations of the City and Xcel Energy under existing agreements, easements or leases are unaffected by this Agreement. The Xcel Energy real property subject to this Agreement is described in the attached Exhibit A ("Xcel Energy Property"). This Agreement also addresses public safety and the application of state building codes at the Xcel Energy Property.

**1. BLACK DOG ROAD WEST BRIDGE (aka LYNDALE BRIDGE)**

**1.A. REQUEST FOR BLACK DOG ROAD WEST BRIDGE (NO. L5774) REPLACEMENT.**

Xcel Energy has petitioned the City to conduct a feasibility study pursuant to Minnesota Statutes Chapter 429 to replace the Black Dog Road West Bridge, also known as the Lyndale Bridge ("Bridge"). The Bridge has been closed since the spring of 2010 due to structural deficiencies. Closure of the Bridge has eliminated the Plant's access to and from Interstate Highway 35W via Black Dog Road resulting in increased traffic on Nicols Road in Eagan and through Black Dog Park in Burnsville. The purpose of the Bridge replacement project is to reopen access to and from 35W via Black Dog Road for loads up to 10 tons per axle and to reduce the Plant's use of the emergency access routes through Black Dog Park and the River Hills neighborhood for its normal operations.

**1.B. CONDITIONS OF PUBLIC ROAD AND BRIDGE REPLACEMENT IMPROVEMENTS.**

Upon execution of this Agreement, the City will order the improvements and replacement of the Bridge as specified in the approved plans for same dated May 22, 2012 the date of City Council approval of the plans prepared by WSB & Associates (the "Black Dog Bridge Project"). Said plans are on file at City Hall. The City shall make reasonable efforts to complete the Bridge replacement by October 31, 2012, dependent on weather and flooding conditions, and will promptly reopen Black Dog Road access to the Plant when Bridge construction is complete. The City shall strictly comply with the terms of the Amended Conditional Use Permit dated January 17, 2012 relating to construction of the Black Dog Bridge Project. The City shall provide in its contract(s) with the contractor(s) that any and all warranties against defects in the design or construction of the Black Dog Road West Bridge are assignable.

This Agreement shall serve as authorization by Xcel Energy to allow the City and its agents and contractors to enter onto Xcel Energy property to construct the Black Dog Bridge Project, as described herein. During Bridge construction, the City may establish additional temporary routing to allow for emergency services and temporary access to the Black Dog Plant.

The Bridge shall be constructed to handle a minimum of a 10 ton per axle load. The City agrees to not post load restrictions of less than 10 tons per axle on the Bridge or on Black Dog Road other than



as needed for public safety or normal seasonal limits consistent with those imposed by the Minnesota Department of Transportation and other road authorities.

**1.C. ASSESSMENT FOR BRIDGE REPLACEMENT IMPROVEMENTS.** Xcel Energy shall reimburse the City's actual third-party costs of designing and constructing the Black Dog Bridge Project up to, but not more than \$657,000. The City of Burnsville's contribution to the project will be the lesser of \$60,000 or 50% of the project costs above \$590,000. Xcel Energy shall reimburse the City in three installments to be made as follows: 1/3 payment due upon award of the construction contract by the City, 1/3 due at time of delivery of bridge materials for construction and 1/3 due upon substantial completion of the project. The City shall provide Xcel Energy with periodic invoices, which shall not be issued more frequently than the schedule set forth herein, for Xcel Energy's share of the foregoing Black Dog Bridge Project costs. Xcel Energy shall pay all such invoices within sixty (60) days after receipt.

If the total Project costs are expected to exceed \$717,000 or if a circumstance arises that may impact construction cost or timeframe, the City agrees to consult Xcel Energy for direction.

## **2. 12th AVENUE EXTENSION**

**2.A. REQUEST FOR ROAD EXTENSION AND IMPROVEMENT OF 12<sup>TH</sup> AVENUE.** Xcel Energy has petitioned the City to conduct a feasibility study pursuant to Minnesota Statutes Chapter 429 for extending and constructing 12<sup>th</sup> Avenue to the Plant to serve as a high water access to the Plant (the "12<sup>th</sup> Avenue Extension Project"). Currently, periods of flooding necessitate the closure of Black Dog Road. When flood waters recede, restoration and rehabilitation of the road surface is necessary. Temporary access during these periods of closure is now from the south through Black Dog Park and through neighborhood street routes. The purpose of the 12<sup>th</sup> Avenue Extension Project is to improve Plant access by extending 12<sup>th</sup> Avenue through Black Dog Park to the Plant's southerly access point as shown on Exhibit B (the "12<sup>th</sup> Avenue Extension Project") and to eliminate Xcel Energy's use of River Hills neighborhood streets to access the Plant via Territorial Drive. The parties specifically agree that the 12<sup>th</sup> Avenue Extension Project, as described herein and depicted in Exhibit B, is strictly contingent on

Xcel Energy proceeding with plans to repower the Plant with an approximately 600MW or greater power plant (the "Repowering").

**2.B. CONDITIONS OF PUBLIC ROAD IMPROVEMENTS TO 12<sup>th</sup> AVENUE.** Subject to execution of this Agreement and the holding of a public hearing pursuant to Minnesota Statutes, § 429.031, and following the decision to proceed with Repowering, the City and Xcel Energy shall meet to determine the appropriate timing upon which to let the contract for the 12<sup>th</sup> Avenue Extension Project, which date shall be no sooner than 180 days following PUC approval of Repowering but not later than the release of the Repowered Plant to MISO (Midwest Independent System Operator) for electric generation on the transmission grid. The City shall seek to have the 12<sup>th</sup> Avenue Extension completed and open for truck traffic within two (2) years after the City has let the contract for same. The total cost of the 12<sup>th</sup> Avenue Extension Project shall not exceed \$5.5 million. Should a circumstance arise that may impact the construction time frame or the cost of the 12<sup>th</sup> Avenue Extension Project, the City agrees to consult Xcel Energy for direction on the construction schedule and costs. The current price estimate is based on a 2012 construction start date with current time and materials price points. Should significant delays occur in obtaining approval to start construction or if other factors result in a material increase in the estimated cost of the 12<sup>th</sup> Avenue Extension Project, the parties agree to discuss project modifications to maintain the estimated cost of the 12<sup>th</sup> Avenue Extension Project as set forth herein.

This Agreement shall serve as authorization by Xcel Energy for the City and its agents and contractors to enter onto Xcel Energy property, as needed, to construct the 12<sup>th</sup> Avenue Extension Project. During construction, the City may establish temporary routing to allow for emergency services and temporary access to Black Dog Plant.

Until such time that the 12<sup>th</sup> Avenue Extension Project construction is completed and open for truck traffic, Xcel Energy shall continue to have use of existing emergency access routes when flood conditions and/or other ingress/egress issues prevent the use of Black Dog Road and its connecting roads for normal plant operating activities.

**2.C. SPECIAL ASSESSMENT FOR 12<sup>th</sup> AVENUE EXTENSION PROJECT.** The City will issue its taxable general obligation improvement bonds pursuant to Minnesota Statutes, Chapter 429 (the "Bonds"), in the maximum principal amount necessary to provide net proceeds of \$5,500,000 for construction of the 12<sup>th</sup> Avenue Extension Project, Exhibit B, plus all usual and customary costs of issuing the Bonds and 50% of capitalized interest on the Bonds, if any.

Xcel Energy agrees to contribute an amount equal to the lesser of (i) 64% of actual project costs of the 12th Avenue Extension Project, or (ii) \$3.5 Million, plus applicable interest as described hereinafter, plus 50% of the capitalized interest on the Bonds (the "Xcel Assessment"). Xcel Energy shall pay the Xcel Assessment as a special assessment, to be amortized over the life of the Bonds (or any bonds issued to refund the Bonds). The term shall be for a period of 20 years, with interest thereon at a rate consistent with City policy in effect at the time of adoption of the Xcel Assessment. Xcel Energy may prepay the Xcel Assessment in whole without penalty or interest within 30 days after adoption by the City of the assessment roll pursuant to Minnesota Statutes, Section 429.061, subd. 3. After such date, Xcel Energy may prepay the Xcel Assessment in whole as authorized under Minnesota Statutes, Section 429.061, subd. 3, without penalty no sooner than the first call date on the bonds. Xcel Energy must provide 30 days' written notice to the City of its intent to prepay.

The City agrees to pay all remaining amounts of the 12<sup>th</sup> Avenue Extension Project estimated at principal amount of \$2.0 Million plus interest thereon at the rate of interest on the Bonds and one-half of the capitalized interest on the Bonds ("City Contribution"). The City is relying on anticipated future increases in the City's share of real property taxes on the Xcel Energy Property to pay the City Contribution. At the time of issuance of the Bonds, Xcel Energy and the City shall meet to discuss the structure of a proposed Bond issue and if necessary, shall enter into a written Deficiency Guaranty Agreement in substantially the form attached hereto as Exhibit D, which guarantees the payment of any Shortfall in the Amounts Available for Debt Service (as such terms are defined in the Deficiency Guaranty Agreement). The final decision as to the structure of the bonds rests with the City. The Deficiency Guaranty Agreement shall be terminated in writing when the Bonds have been fully paid or

provision has been made for payment thereof in full. Amounts Available for Debt Service shall be allocated to payment of Debt Service (as such term is defined in the Deficiency Guaranty Agreement) prior to the calculation of any shortfall. Xcel Energy hereby waives any procedural irregularity or failure to conform to Minnesota Statutes Chapter 429 and expressly waives any appeal rights pursuant to Minnesota Statutes § 429.081 up to the maximum Xcel Assessment, along with applicable interest, as described in the first paragraph of this Section 2.C.

If the parties determine that it is not financially feasible to construct the 12<sup>th</sup> Avenue Extension Project, Xcel will be permitted to continue to access the Plant through Black Dog Park, as set forth in Section 2.B.

**3. PLAT OF BLACK DOG POWER PLANT.** To facilitate the construction of any future improvements and to better distinguish between the public and private improvements serving the Plant and public lands, Xcel Energy shall apply for preliminary and final plat approval for the Xcel Energy Property. The plat shall identify the lots, dedications and public rights of way. The preliminary and final plat shall be submitted as one application, application fees in an estimated amount of approximately \$800, application escrow deposit of \$5000, and submittal documents shall be filed on or before December 31, 2012. The plat shall designate the Plant site as highlighted in attached Exhibit C (the "Plant Site Lot") as one buildable lot, and the remaining areas of the Xcel Energy Property as an outlot. Xcel Energy will pay the City's cost of mapping and erosion control inspection fees in the amount of approximately \$9,120. The Plat shall dedicate to the City a utility and drainage maintenance easement in the approximate location of the current railroad tracks at the south side of Xcel Energy Property, as further described at Section 4 below. The drainage and utility easement will be subject to other existing easements and the USFWS lease that already exist. Xcel Energy shall furnish a boundary survey of the Property with all property corner monuments in place and marked with lath and flags. Any encroachments on or adjacent to the Property shall be noted on the survey, and documented approval from any impacted property owners or governmental agency with right-of-way claims must be submitted. Xcel Energy shall post security with the City for the final placement of interior subdivision iron monuments at property corners as follows: 2 lots

at \$500/ lot. The security shall be paid prior to City signing the mylars of the plat and recording of the plat. In accordance with Minnesota Statutes § 505.02, the final placement of iron monuments for all lot corners must be completed before the applicable security is released. Xcel Energy's surveyor shall also submit a written notice to the City certifying that the monuments have been installed. The certificate of survey must also include a certification that all irons for a specific lot have either been found or set prior to the issuance of a building permit for that lot, if applicable.

Xcel Energy is required to submit the final plat to the City in electronic format. The electronic format shall be either AutoCAD.DWG file or a .DXF file. Any construction record drawings (e.g., grading, utilities, and streets) shall be in electronic format in accordance with standard City specifications. Xcel Energy shall also submit one complete set of certified reproducible construction plans, if applicable.

A separate development contract typically executed upon filing of the final plat shall not be required. This Agreement satisfies the required development contract for the plat. Moreover, the parties hereto acknowledge that the Xcel Energy Property was previously developed and that the "Required Basic Improvements" for new plats, as set forth in Chapter 11-5 of the Burnsville City Code shall not be required, except as specifically set forth herein and unless additional development occurs within the outlot(s).

The City shall permanently vacate its road right-of-way and terminate its existing easements for Black Dog Road from the western side of the Black Dog Road West Bridge (aka Lyndale Bridge) to the eastern side of the Black Dog Road Eastern Bridge (aka Cedar Bridge). Such vacation may occur in stages and the City shall have no obligation to vacate any section of Black Dog Road until after the Black Dog Road West Project is complete, the trail easement, as described in Section 7 has been conveyed to the City, and the easements required hereunder and the final plat has been recorded at the County. As sections of Black Dog Road are vacated, the roadway area shall revert to Xcel Energy's ownership for its private use, the parties shall promptly execute and deliver amendment(s) of the Black Dog Road easement in recordable form and the City shall assign and transfer to Xcel Energy all warranties for the design and construction of Black Dog Bridge. Remaining sections of Black Dog Road that are not vacated shall be subject to the terms and conditions of all existing easements. The City shall clean and

repair all sections of vacated Black Dog Road prior to turning over any sections to Xcel Energy. Repairs shall be limited to filling of potholes, river bank stabilization and returning of roadway and shoulder areas to a safe condition for long-term low speed private use. The City agrees to perform repairs on the western portion of Black Dog Road (from Black Dog Plant to the Lyndale Bridge) consistent with Exhibit H prior to the end of year 2013 at an estimated costs and scope of work are defined in Exhibit H. The City's contribution to the western roadway repairs shall not exceed \$150,000, the balance to be paid for by Xcel Energy.

The final plat shall be submitted to the County Surveyor for review within 60 days after the City Council approval of final plat, as set forth in Section 11-2-4(D) of the Burnsville City Code.

**4. STORMWATER DRAINAGE AND MANAGEMENT FEE.** As part of the platting described in Section 3, and in lieu of the stormwater connection charge for past or proposed physical improvements to the Plant site lot, Xcel Energy shall dedicate to the City a 50-foot drainage and utility easement along the railroad right of way on the southern edge of the Xcel Energy Property. This dedication shall satisfy plat requirements for payment of the Storm Sewer Connection Charge. No fee shall be charged for the outlot(s) unless and until the outlot(s) are platted in the future.

**5. CITY MAPPING AND EROSION CONTROL INSPECTION FEE.** As part of the platting described in Section 3, Xcel Energy shall pay the City a mapping and erosion control inspection fee of approximately \$9,120 based on the estimated size of the Plant Site Lot. This fee shall be paid prior to the City signing the mylars and recording of the plat. The final fee will be determined by the actual size of the Plant Lot Site. No fee shall be charged for the outlot(s) unless and until platted in the future.

**6. PARK DEDICATION.** In full satisfaction of any park dedication requirements pursuant to Minn. Stat. § 462.358, subd. 2, and Burnsville City Code Section 11-4-8, Xcel Energy shall dedicate to the City certain park land, and shall assure that certain open spaces are preserved, all as provided herein:

- a. Amend, contingent on U.S. Fish and Wildlife Service ("USFWS") approval, the lease dated May 19, 1982 with the USFWS of approximately 1,400 acres of wildlife refuge adjacent to the Plant to, among other things, extend the term for an additional 50 years (at a cost of \$1/year) and to provide that the City shall be the tenant should USFWS decide to not

extend the lease at any point in time. Xcel Energy shall retain its rights to use the land subject to the lease as described in the USFWS lease.

- b. Dedicate for park purposes and convey fee title to the City of 3 parcels of land (approximately 1.6 acres in total) south of railroad tracks immediately east of existing park access road, as shown in Exhibit E.
- c. Grant the City a non-exclusive permanent easement for park purposes over one parcel (a total of approximately 2.0 acres) of land currently used as a parking lot and trailhead area at Black Dog Road West Bridge as shown in Exhibit F subject to Xcel Energy's rights to use the easement area for Plant purposes and shall be subject to the restrictions and conditions for easements as set forth herein. Upon dedication, the City and Xcel Energy shall terminate the existing park permit.

The foregoing dedications and commitments are *in lieu of* paying the City any park dedication fees as a result of the platting estimated at \$836,000, assuming approximately 76 acres will be platted as the Plant Site Lot, and Xcel Energy shall have no obligation to reimburse the City's costs, if any, for future park land acquisition cost for 12<sup>th</sup> Avenue Extension Project and any lost on-street park parking. Xcel Energy shall have no obligation to pay any fee in lieu of park dedication, provided it completes the obligations described in this Section 6, even if the number of acres in the platted lot for the Plant is more or less than the estimated 76 acres. Xcel Energy shall not pay any other costs, assessments or fees associated with any trails or park facilities or other work not specifically set forth in this Agreement unless additional development occurs on the outlot(s) .

7. **EASEMENTS.** Xcel Energy agrees to grant the City a perpetual trail easement to allow for construction of a regional trail parallel to Black Dog Road and the Minnesota River, to be located generally in the areas shown at Exhibit G. The trail easement area shall be at least 20 feet in width, except for locations where existing site constraints preclude this width, in which case 15 feet shall be the minimum width. The City and Xcel Energy agree to work in good faith to establish a location to allow for construction of a regional trail parallel to Black Dog Road and the Minnesota River by 2016. In the event this is not possible, Xcel shall grant the park and trail easements as soon as feasible following completion of the closure and remediation of the coal and ash handling areas and remediation work noted in the following paragraph. The trail easement shall also provide for alternative locations outside

of each bridge area to be utilized by the City pedestrian bridges only in the event the planned trail crossings within existing bridge structures are unavailable or not viable in the future.

Xcel Energy's responsibility to grant easements for all or a portion of the trail or park is strictly contingent upon approval by applicable governmental authorities of an appropriate and reasonable closure and remedial action plan if any, that may be cost effectively implemented, as necessary, to support public recreational use of those areas utilized for trails and parks and Xcel Energy's reasonable determination that it may obtain assurances from local and state regulators that no further remediation of the plant property will be required to meet requirements under existing applicable environmental laws or regulations. The City agrees to cooperate in good faith with Xcel Energy in its selection of remedial approaches, if any, to satisfy the foregoing conditions, which may include conveying easements in phases to trail as closure of segments of same are completed. Xcel Energy's responsibility to remediate any trail or park areas shall be limited to only those materials that were generated or used by Xcel Energy in the course of its operations at the Property. The City shall respond to any materials and wastes that it may encounter in the course of its construction of the trail or any park areas pursuant to the requirements of applicable law. Xcel Energy shall not be responsible for any third party wastes deposited on the site including but not limited to river spoils.

Xcel Energy shall have no responsibility for construction or maintenance of the trail or any parks. Xcel Energy's responsibility hereunder shall be limited to granting to the City perpetual easement(s) for the trail and/or park areas in their "as is, where-is" conditions with terms specifically addressing the risks associated with public recreational use of trail or park areas located on or adjacent to land that has had historic and current industrial uses including, without limitation, the operation of an existing power plant. The easements shall be subject to any easements and encumbrances in existence as of the date hereof, and Xcel Energy's reserved rights.

The parties hereto agree that the City shall have no obligation to vacate or abandon any section of Black Dog Road, as further described in Section 3 unless and until Xcel has completed any necessary



remediation and has conveyed the trail easement to the City for the corresponding section of Black Dog Road.

The easement agreements shall provide Xcel Energy with adequate liability protection provided by the City against any and all claims that may be asserted against Xcel Energy for property damage, remediation of natural resource damages, personal injury or death relating to the public's use of the trail or the parks.

The easement agreements shall provide Xcel Energy with the right to utilize or temporarily close all or portions of the park or trail to the public from time to time for purposes of addressing any necessary environmental issues, future construction at the Plant, or at other times when Plant operations might interfere with the public's safe use of the trail or park. Xcel Energy agrees to do so in such a manner as to minimize impacts to the trail or park users. Following the City's construction of a section of the trail or park, Xcel Energy shall be responsible for the restoration of all trail easements and park areas to existing conditions should Xcel Energy's subsequent operations or maintenance projects impact these areas. In addition, Xcel Energy shall reserve the right in the easement agreements to impose reasonable conditions on the use and maintenance of the trail or park to protect the public, to facilitate environmental remediation or to support Plant operations, which may include the use of certain institutional controls or other similar restrictions. The parties hereto agree and acknowledge that portions of the trail may not be available for public use unless and until prudent environmental remediation is completed. The easements shall define the approved recreational uses allowed, maintenance and repair responsibilities, signage requirements, and other reasonable and customary long-term easement provisions.

**8. COMPLIANCE WITH LAWS AND REGULATIONS.** The City and Xcel Energy agree to comply with all applicable laws and regulations.

**9. PERMITS.** Xcel Energy shall obtain or require its contractors and subcontractors to obtain all necessary building permits that are required by applicable state law. The City and Xcel Energy will enter into a separate Memorandum of Understanding detailing said requirements for the administration and enforcement of the State Building Code as it pertains to the Black Dog Plant.

**10. EMERGENCY SERVICES.** For the purposes of construction and long term safety at the Plant, the City and Xcel Energy shall enter into a Memorandum of Understanding related to emergency services that are provided to the Plant.

**11. LICENSE.** Xcel Energy hereby grants the City, its agents, employees, officers and contractors a license to enter the Property to perform all work and inspections deemed appropriate by the City in conjunction with the development described in Sections 1 and 2 of this Agreement.

**12. RESPONSIBILITY FOR COSTS.**

A. Xcel shall hold the City and its officers, employees, and agents harmless from claims made by third parties for damages sustained or costs incurred resulting from plat approval and development. Xcel shall indemnify the City and its officers, employees, and agents for all costs, damages, or expenses which the City may pay or incur in consequence of such claims, including reasonable attorneys' fees.

B. Xcel shall reimburse the City for costs incurred in the enforcement of this Contract, including reasonable and necessary engineering and attorneys' fees.

C. Xcel shall pay, or cause to be paid when due, and in any event before any penalty is attached, all special assessments referred to in this Contract. This is a personal obligation of Xcel and shall continue in full force and effect even if Xcel sells one or more lots, the entire plat, or any part of the Property.

D. Xcel shall pay in full all bills submitted to it by the City for obligations incurred under this Contract within sixty (60) days after receipt. If the bills are not paid on time, the City may halt plat development and construction until the bills are paid in full. Bills not paid within sixty (60) days shall accrue interest at the rate of ten percent (10%) per year.

E. In addition to the charges and special assessments referred to herein, the City may impose other applicable charges and special assessments as required by state or local regulation such as, but not limited to, sewer availability charges ("SAC"), City water connection charges, City sewer connection charges and building permit fees.

**13. MISCELLANEOUS.**

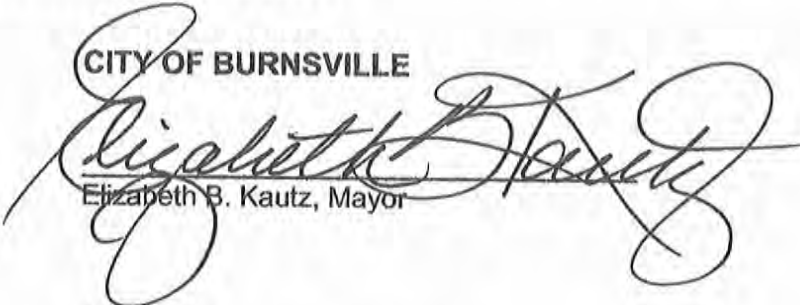
- A. To the best of its knowledge, Xcel Energy represents to the City that the plat will comply with all city, county, metropolitan, state, and federal laws and regulations, including but not limited to: subdivision ordinances, zoning ordinances, and land use regulations with respect to platting.
- B. Third parties shall have no recourse against the City or Xcel Energy under this Agreement.
- C. Uncured breach of the terms of this Agreement by Xcel Energy shall be grounds for denial of building permits and other city approvals.
- D. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Agreement.
- E. The action or inaction of the City or Xcel Energy shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. The City's or Xcel Energy's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.
- F. This Agreement shall run with the land and may be recorded against the title to the property.
- G. Each right, power or remedy herein conferred upon the City is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to City, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.
- H. Xcel Energy may not assign this Agreement without the written permission of the City Council, which shall not be unreasonably withheld. Xcel Energy's obligation hereunder shall continue in full force and effect even if Xcel Energy sells one or more lots, the entire plat, or any part of it.

14. **NOTICES.** Required notices to Xcel Energy shall be in writing, and shall be either hand delivered to Xcel Energy, its employees or agents, or mailed to Xcel Energy by certified mail at the following address:

Xcel Energy  
Black Dog Plant  
1400 East Black Dog Road  
Burnsville, MN 55337  
Attention: Plant Manager

Notices to the City shall be in writing and shall be either hand delivered to the City Manager, or mailed to the City by certified mail in care of the City Manager at the following address: Burnsville City Hall, Attn: City Engineer, 100 Civic Center Parkway, Burnsville, Minnesota 55337.

(SEAL)

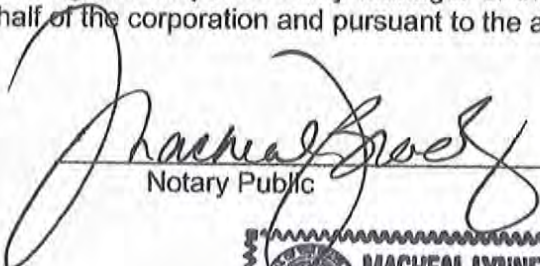
**CITY OF BURNSVILLE**  
  
Elizabeth B. Kautz, Mayor

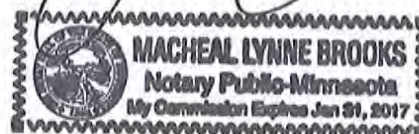
AND

  
\_\_\_\_\_  
Craig L. Ebeling, City Manager

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF DAKOTA    )

The foregoing instrument was acknowledged before me this 26 day of June, 2012, by **Elizabeth B. Kautz** and by **Craig L. Ebeling**, the Mayor and City Manager of the City of Burnsville, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

  
\_\_\_\_\_  
Notary Public



Dated: June 6/1, 2012

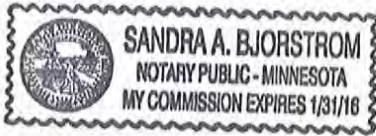
**NORTHERN STATES POWER COMPANY, d/b/a  
XCEL ENERGY**

BY: *Kent T. Larson*  
Kent T. Larson

Its Vice President

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of June, 2012, by Kent T. Larson, the Vice President of Northern States Power Company, a Minnesota corporation, on behalf of the corporation.



*Sandra A. Bjorstrom*  
Notary Public

DRAFTED BY:  
CAMPBELL, KNUTSON  
*Professional Association*  
317 Eagandale Office Center  
1380 Corporate Center Curve  
Eagan, Minnesota 55121  
Telephone: (651) 452-5000

# EXHIBITS

# Exhibit A - Xcel Energy Black Dog Property Map

## LEGAL DESCRIPTION OF PROPERTY:

Lot Two (2) lying South of Cedar Avenue, and Lot Three (3) and the Southeast Quarter of the Southeast Quarter (SE1/4 of SE1/4) of Section Thirteen (13);  
Lots Five (5) and Six (6) in Section Twenty-two (22);

Lots Five (5) and Six (6) and the South One half of the Southeast Quarter (S1/2 of SE1/4) excepting right of way of the Chicago, St. Paul, Minneapolis and  
Omaha Railway as now laid out and established in Section Twenty-two (22);

Lots Two (2) and Three (3) and the Northeast Quarter of Northeast Quarter (NE1/4 of NE1/4), Southeast Quarter of Northeast Quarter (SE1/4 of NE1/4), Northeast Quarter of Southwest Quarter (NW1/4 of SW1/4) and those portions of the Northeast  
Quarter of Northeast Quarter (NE1/4 of NE1/4), the Southwest Quarter of Southwest Quarter (SW1/4 of NE1/4), the Northeast Quarter of Southwest Quarter (NE1/4 of SW1/4), the Southwest Quarter of Southwest Quarter (SW1/4 of SW1/4),  
the Southwest Quarter of Northeast Quarter (SE1/4 of NE1/4), and the Northeast Quarter of Southwest Quarter (NW1/4 of SE1/4), lying north and west of the Chicago, St. Paul, Minneapolis and Omaha Railway right of way as now laid out and established  
in Section Twenty-four (24);

The North One half of the Northeast Quarter (N1/2 of NE1/4), the Southeast Quarter of Northeast Quarter (SE1/4 of NE1/4), and those portions of the Northeast Quarter of Northeast  
Quarter (NE1/4 of NE1/4), the Southwest Quarter of Northeast Quarter (SW1/4 of NE1/4), the Southwest Quarter of Southwest Quarter (SW1/4 of NE1/4), the Northeast Quarter of Southwest Quarter (NE1/4 of SW1/4) and the Northeast Quarter of  
Southwest Quarter (NE1/4 of SW1/4) lying north and west of the Chicago, St. Paul, Minneapolis and Omaha Railway right of way as laid out and established in Section Twenty-seven (27);

Lot Two (2) and the Southwest Quarter (SW1/4), the East One half of the Northeast Quarter (E1/2 of NW1/4), the Northeast Quarter (NE1/4) and the North One half of the Southeast Quarter (N1/2 of SE1/4), except right of way of the Chicago, St. Paul,  
Minneapolis and Omaha Railway as now laid out and established in Section Twenty-seven (27);

All in Township Twenty-seven (27) North, Range Twenty-four (24) West, all in Wapeta Ranch on the Minnesota, according to the map thereof on file and record in the office of the Register of Titles and for said County and State.  
Subject to easements of record. Per Certificate of Title No. 116719

Together with:

A tract of land in the SW1/4 of Section 24, Township 27 North, Range 24 West, described as follows:

Beginning at the Southwest corner of said SW1/4, thence North 1° 31' 47" West, along the West line of said SW1/4, 241.13 feet; thence South 59° 03' West 136.03 feet; thence South 63° 45' 33" West along the  
South line of said SW1/4, 17.71 feet to the point of beginning.

Also,

A tract of land in the NW1/4 of Section 25, Township 27 North, Range 24 West, described as follows:

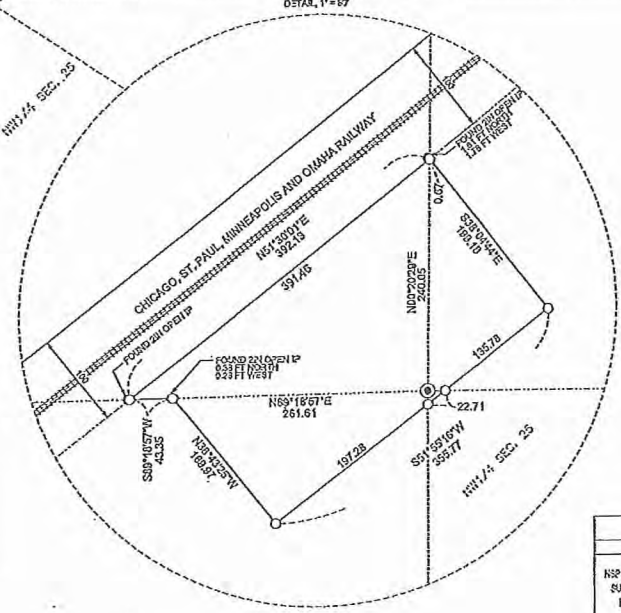
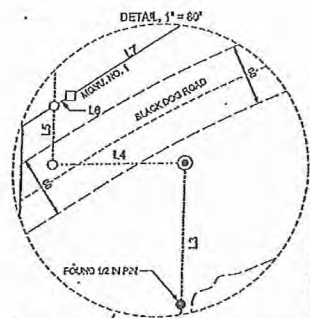
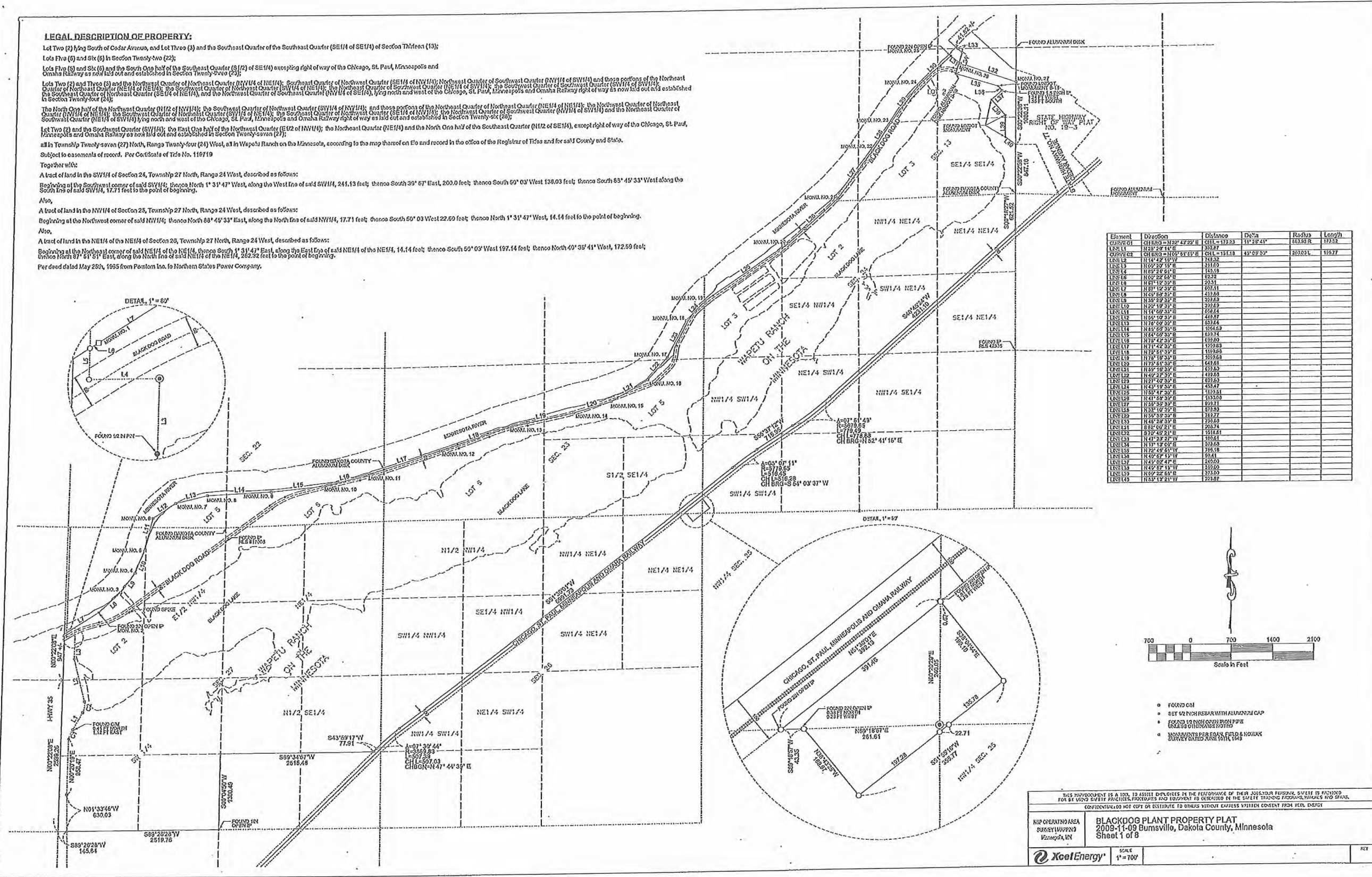
Beginning at the Northwest corner of said NW1/4; thence North 88° 45' 33" East, along the North line of said NW1/4, 17.71 feet; thence South 59° 03' West 22.69 feet; thence North 1° 31' 47" West, 14.14 feet to the point of beginning.

Also,

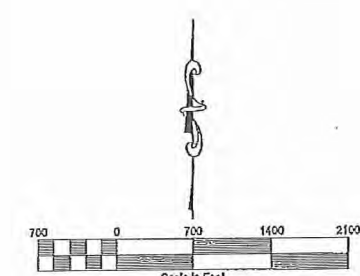
A tract of land in the NE1/4 of the NE1/4 of Section 25, Township 27 North, Range 24 West, described as follows:

Beginning at the Northeast corner of said NE1/4 of the NE1/4, thence South 1° 31' 47" East, along the East line of said NE1/4 of the NE1/4, 14.14 feet; thence South 59° 03' West 197.14 feet; thence North 49° 38' 41" West, 172.59 feet;  
thence North 87° 51' 51" East, along the North line of said NE1/4 of the NE1/4, 262.32 feet to the point of beginning.

Per deed dated May 28th, 1955 from Permco Inc. to Northern States Power Company.



Element	Direction	Distance	De/Se	Radius	Length
LINE 01	CH BRG = 128° 47' 22" E	232.87	CHL = 113.53	11° 29' 41"	
LINE 02	CH BRG = 105° 04' 54" E	111.18	43° 02' 32"	260.63 L	116.77
LINE 03	CH BRG = 105° 04' 54" E	111.18			
LINE 04	CH BRG = 105° 04' 54" E	111.18			
LINE 05	CH BRG = 105° 04' 54" E	111.18			
LINE 06	CH BRG = 105° 04' 54" E	111.18			
LINE 07	CH BRG = 105° 04' 54" E	111.18			
LINE 08	CH BRG = 105° 04' 54" E	111.18			
LINE 09	CH BRG = 105° 04' 54" E	111.18			
LINE 10	CH BRG = 105° 04' 54" E	111.18			
LINE 11	CH BRG = 105° 04' 54" E	111.18			
LINE 12	CH BRG = 105° 04' 54" E	111.18			
LINE 13	CH BRG = 105° 04' 54" E	111.18			
LINE 14	CH BRG = 105° 04' 54" E	111.18			
LINE 15	CH BRG = 105° 04' 54" E	111.18			
LINE 16	CH BRG = 105° 04' 54" E	111.18			
LINE 17	CH BRG = 105° 04' 54" E	111.18			
LINE 18	CH BRG = 105° 04' 54" E	111.18			
LINE 19	CH BRG = 105° 04' 54" E	111.18			
LINE 20	CH BRG = 105° 04' 54" E	111.18			
LINE 21	CH BRG = 105° 04' 54" E	111.18			
LINE 22	CH BRG = 105° 04' 54" E	111.18			
LINE 23	CH BRG = 105° 04' 54" E	111.18			
LINE 24	CH BRG = 105° 04' 54" E	111.18			
LINE 25	CH BRG = 105° 04' 54" E	111.18			
LINE 26	CH BRG = 105° 04' 54" E	111.18			
LINE 27	CH BRG = 105° 04' 54" E	111.18			
LINE 28	CH BRG = 105° 04' 54" E	111.18			
LINE 29	CH BRG = 105° 04' 54" E	111.18			
LINE 30	CH BRG = 105° 04' 54" E	111.18			
LINE 31	CH BRG = 105° 04' 54" E	111.18			
LINE 32	CH BRG = 105° 04' 54" E	111.18			
LINE 33	CH BRG = 105° 04' 54" E	111.18			
LINE 34	CH BRG = 105° 04' 54" E	111.18			
LINE 35	CH BRG = 105° 04' 54" E	111.18			
LINE 36	CH BRG = 105° 04' 54" E	111.18			
LINE 37	CH BRG = 105° 04' 54" E	111.18			
LINE 38	CH BRG = 105° 04' 54" E	111.18			
LINE 39	CH BRG = 105° 04' 54" E	111.18			
LINE 40	CH BRG = 105° 04' 54" E	111.18			
LINE 41	CH BRG = 105° 04' 54" E	111.18			
LINE 42	CH BRG = 105° 04' 54" E	111.18			
LINE 43	CH BRG = 105° 04' 54" E	111.18			
LINE 44	CH BRG = 105° 04' 54" E	111.18			
LINE 45	CH BRG = 105° 04' 54" E	111.18			
LINE 46	CH BRG = 105° 04' 54" E	111.18			
LINE 47	CH BRG = 105° 04' 54" E	111.18			
LINE 48	CH BRG = 105° 04' 54" E	111.18			
LINE 49	CH BRG = 105° 04' 54" E	111.18			
LINE 50	CH BRG = 105° 04' 54" E	111.18			



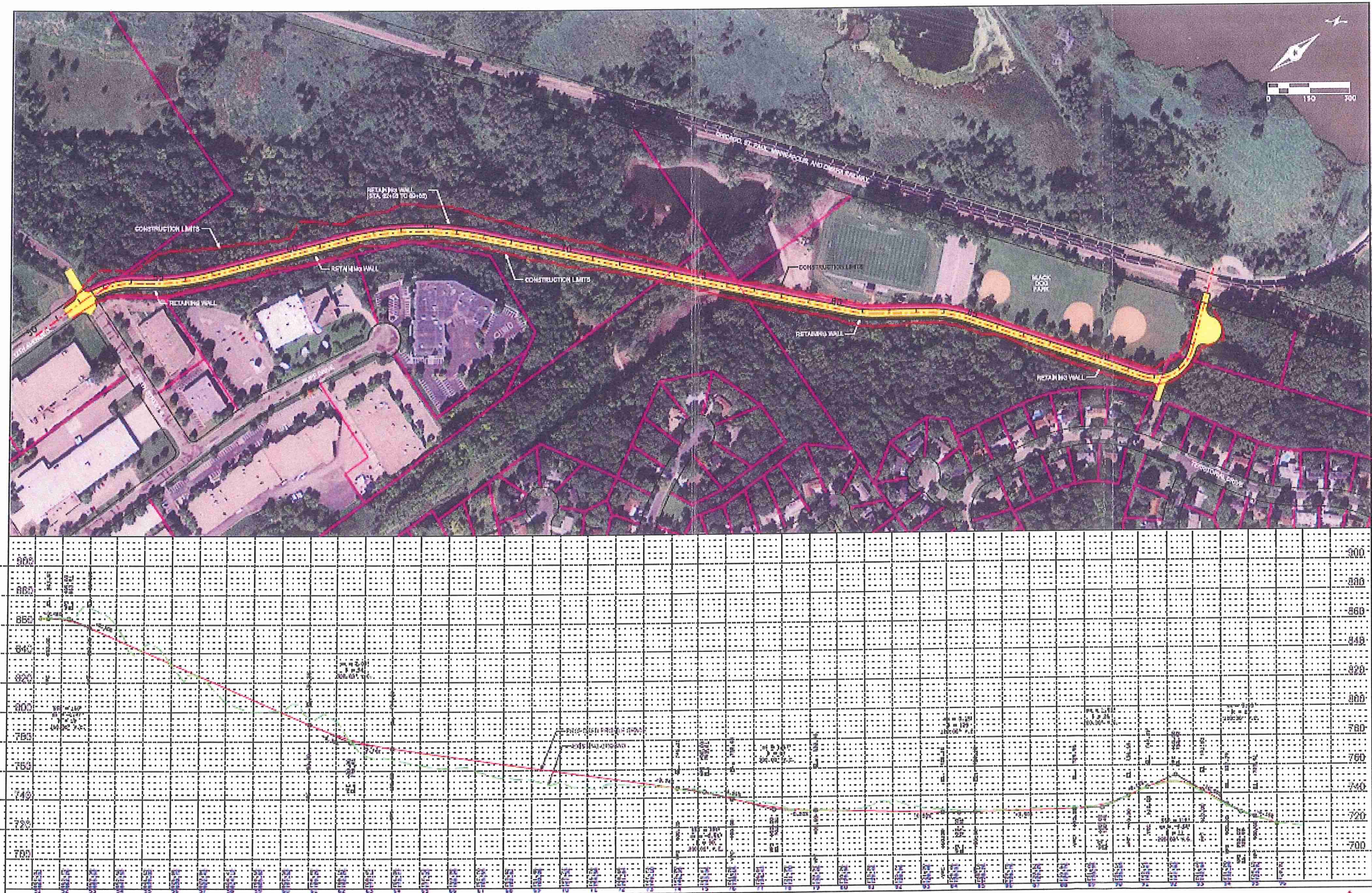
- FOUND CM
- SET 1/2 INCH REBAR WITH ALUMINUM CAP
- FOUND 1/2 INCH OPEN PIPE (UNLESS OTHERWISE NOTED)
- MONUMENTS PER FIELD & NO. 1004 SURVEY DATED JUNE 10TH, 1944

THIS MAP/DRAWING IS A TOOL TO ASSIST EMPLOYEES IN THE PERFORMANCE OF THEIR JOBS. YOUR PERSONAL SAFETY IS PROMOTED FOR BY USING SAFETY PRACTICES, PROCEDURES AND EQUIPMENT AS DESCRIBED IN THE SAFETY TRAINING PROGRAMS, MANUALS AND SPARK. CONFIDENTIAL. DO NOT COPY OR DISSEMINATE TO OTHERS WITHOUT EXPRESS WRITTEN CONSENT FROM XCEL ENERGY.

Xcel Energy  
 2009-11-09 Burnsville, Dakota County, Minnesota  
 Sheet 1 of 8  
 SCALE 1" = 100'

A1/1 6/1/12

# EXHIBIT B – 12TH AVENUE ALIGNMENT

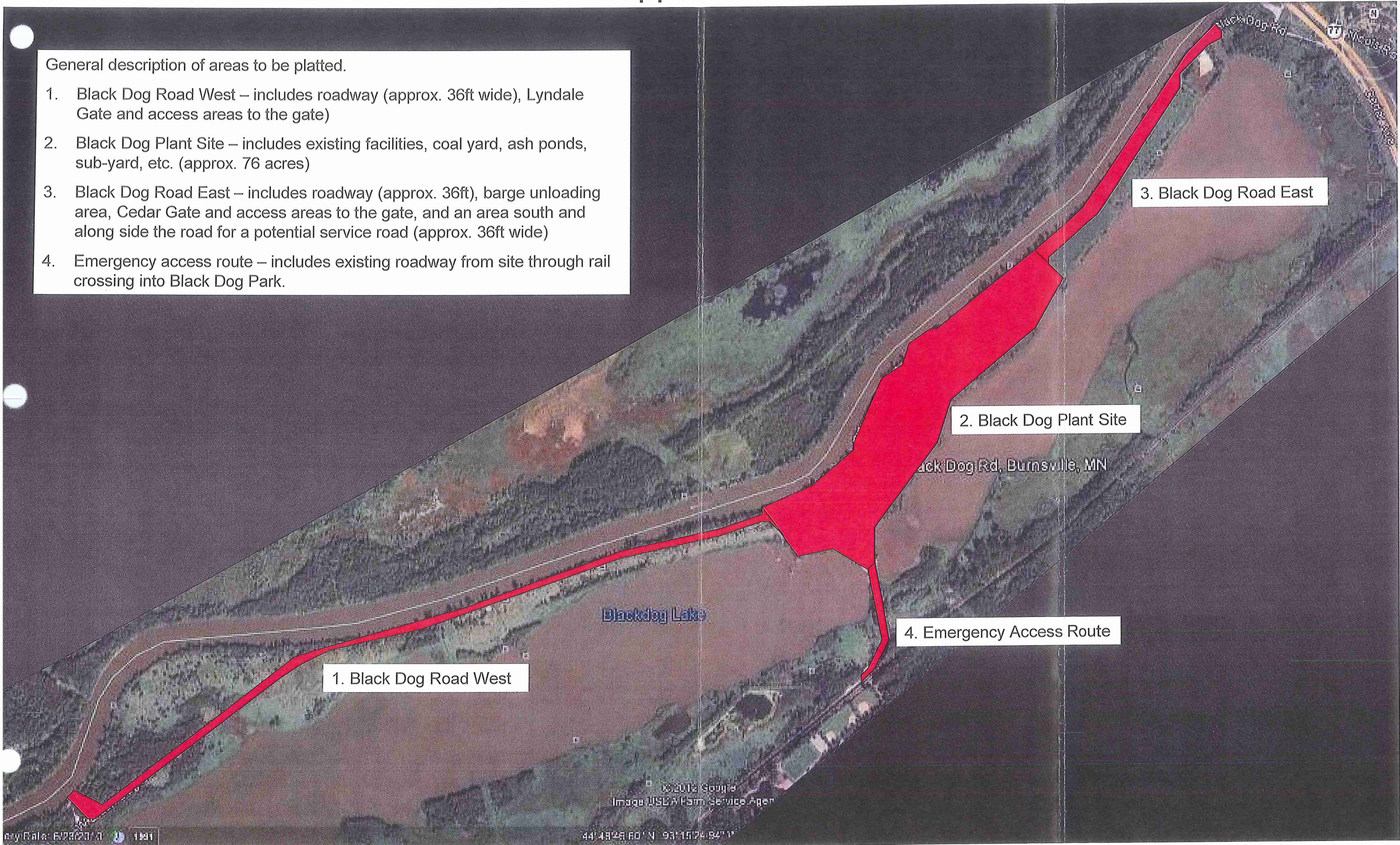




# Exhibit C – Approximate Platted Area

## General description of areas to be platted.

1. Black Dog Road West – includes roadway (approx. 36ft wide), Lyndale Gate and access areas to the gate)
2. Black Dog Plant Site – includes existing facilities, coal yard, ash ponds, sub-yard, etc. (approx. 76 acres)
3. Black Dog Road East – includes roadway (approx. 36ft), barge unloading area, Cedar Gate and access areas to the gate, and an area south and along side the road for a potential service road (approx. 36ft wide)
4. Emergency access route – includes existing roadway from site through rail crossing into Black Dog Park.



1. Black Dog Road West

2. Black Dog Plant Site

3. Black Dog Road East

4. Emergency Access Route

**Exhibit D**

**DEFICIENCY GUARANTY AGREEMENT**

THIS DEFICIENCY GUARANTY AGREEMENT is made on or as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between NORTHERN STATES POWER COMPANY, a Minnesota Corporation, D/B/A XCEL ENERGY (the "Guarantor") and the CITY OF BURNSVILLE, a Minnesota municipal corporation (the "City").

**RECITALS**

The Guarantor and the City entered into a ROAD ACCESS IMPROVEMENTS/ ASSESSMENT AND DEVELOPMENT AGREEMENT relating to the Guarantor's Black Dog Power Plant dated \_\_\_\_\_, 2012 (the "Contract"), pursuant to which the City agreed to issue its taxable general obligation improvement bonds (the "Bonds") for the 12<sup>th</sup> Avenue Extension construction project (the "Project") as described therein. Under the terms of the Contract, the Guarantor agreed to pay a portion of the capital costs of the Project as a special assessment in the principal amount of (i) the lesser of 64% of Project costs, or (ii) \$3,500,000, plus applicable interest as described in the Contract (the "Xcel Assessment"), plus an amount equal to 50% of any capitalized interest necessary to pay debt service on the Bonds, as determined by the City's financial advisor at the time of the sale of the Bonds, and the City agreed to pay all remaining Project costs in an amount estimated at \$2,000,000, plus interest at the rate of interest on the Bonds. If the Guarantor prepays the Xcel Assessment before issuance of the Bonds, it is the parties' intent that payments of principal and interest on the Bonds, and on any bonds issued to refund the Bonds (the "Debt Service"), will be paid solely from Anticipated Tax Increases (as defined in Article II herein). If the Guarantor does not prepay the Xcel Assessment prior to issuance of the Bonds, it is the parties' intent that Debt Service will be paid in part from the Xcel Assessment and in part from Anticipated Tax Increases. Should the Anticipated Tax Increases (and, if applicable, the Xcel Assessment) be insufficient to fully pay the Debt Service on any payment date, the Guarantor agrees to pay the difference, as specifically provided herein.

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements herein contained, the Guarantor and the City hereby agree as follows:

**ARTICLE I**

**DEFINITIONS AND OTHER PROVISIONS**

1.1) Definitions. All capitalized terms used in this Agreement shall have the meaning assigned in this Agreement or, if undefined herein, the Contract.

1.2) Interpretive Aids.

(01) "This Agreement" means this Deficiency Guaranty Agreement as originally executed or as it may from time to time be supplemented or amended.

(02) All references in this instrument to designated "Articles," "Sections," and other subdivisions are to the designated Articles, Sections, and other subdivisions of this instrument as originally executed.

(03) The words "herein," "hereof," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or other subdivision.

(04) The terms defined in this Agreement include the plural as well as the singular and the feminine and neuter genders as well as the masculine gender.

(05) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles.

(06) All computations herein provided for shall be made in accordance with generally accepted accounting principles.

1.3) Effect of Headings. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

1.4) Successors and Assigns. All covenants and agreements in this Agreement by the parties hereto shall, to the full extent permitted by law, bind such parties and their successors and assigns, whether so expressed or not.

1.5) Severability Clause. In case any provision in this Agreement shall be determined to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

1.6) Execution in Counterparts. This Agreement may be executed in any number of counterparts. All such counterparts shall be deemed to be originals and together constitute one and the same instrument.

1.7) Construction. This Agreement shall be interpreted and construed in accordance with laws of the State of Minnesota.

1.8) Benefit of Agreement. Nothing in this Agreement, expressed or implied, shall give to any person, other than the parties hereto and their successors hereunder, any benefit or other legal or equitable right, remedy, or claim under this Agreement.

## ARTICLE II

### ANTICIPATED TAX INCREASES

2.1) Definition. "Anticipated Tax Increases" means the difference between the real estate taxes payable to the City with respect to the Xcel Energy Property (as defined in the Contract) in the year in which the Bonds are issued and the real estate taxes payable to the City in each year following the year in

which the Bonds are issued, during the period the Bonds are outstanding, as calculated in Section 2.2 hereof.

2.2) Annual Calculation. Anticipated Tax Increases will be calculated as follows: in each tax-payable year after issuance of the Bonds, the City will compare the net tax capacity of the Xcel Energy Property for that tax-payable year (the "Current Tax Capacity") to the net tax capacity of that property in the tax-payable year in which the Bonds are issued (the "Original Tax Capacity"). If the Current Tax Capacity is greater than the Original Tax Capacity, that difference is the "Captured Tax Capacity." The Captured Tax Capacity is further adjusted by subtracting the portion thereof attributable to the fiscal disparities pool under Minnesota Statutes, Chapter 473F, and the result is the "Adjusted Captured Tax Capacity." The Adjusted Captured Tax Capacity multiplied by the local tax rate for the tax-payable year of calculation is the "Anticipated Tax Increase" for that year. The City will undertake the calculation described in this paragraph as soon as practical after both the Current Tax Capacity and the local tax rate is available from the County in any year (which typically occurs in March under current law).

2.3) Application to Debt Service. Upon calculation of the Anticipated Tax Increases as described herein, the two semi-annual installments of Anticipated Tax Increases for any tax-payable year will be compared to the Debt Service due on the Bonds on August 1 of that year and February 1 of the following year (as further described in Section 3.2 hereof). The City will apply such amounts of Anticipated Tax Increases as are actually paid by the Guarantor toward payment of the Debt Service payable on the Bonds in the year of calculation.

### ARTICLE III

#### GUARANTY

3.1) Guaranty. During the term hereof, the Guarantor hereby guarantees, unconditionally and irrevocably, the timely payment in full of the Debt Service, as and when due, if the Anticipated Tax Increases and, if applicable, the Xcel Assessment (together, the "Amounts Available for Debt Service") are insufficient to pay such Debt Service on any February 1 or August 1 (each a "Payment Date"). In this regard, Guarantor agrees for the benefit of the City, its successors and assigns, that if the Anticipated Tax Increases in any year during the term hereof, when added to the Xcel Assessment, if applicable, are less than the required Debt Service payable on each Payment Date in that year, then Guarantor shall pay the difference between the amount of such Debt Service and such Amounts Available for Debt Service (the "Deficiency Payments") at the times and in the manner described in Section 3.2 of this Agreement. The Debt Service payments are as set forth on Exhibit A attached hereto.

3.2) Payment on Guaranty. On each January 1 and July 1, from and after the date hereof until the Bonds are paid in full, the City shall determine whether and to what extent the Amounts Available for Debt Service are insufficient to pay the Debt Service on the next Payment Date, taking into consideration (i) capitalized interest available from the proceeds of the Bonds and set aside for such Debt Service payment, and (ii) any other funds in the Debt Service fund. If the Amounts Available for Debt Service are not sufficient to provide for full and timely payment of the Debt Service on such Payment Date, then the City shall give immediate written notice to the Guarantor of the deficiency (such deficiency being hereinafter referred to as the "Shortfall"). Such notice shall be delivered to the Guarantor on or before January 10 for any Shortfall with respect to the then-following February 1 Payment Date, and on or before July 10 for any Shortfall with respect to the then-following August 1 Payment Date. Failure of the City to

give written notice to the Guarantor shall not affect the validity of the proceedings to collect any Shortfall, but the Guarantor shall have no obligation to pay any Shortfall until it has received written notice of same.

Upon receipt of written notice of such Shortfall, the Guarantor shall pay to the City a Deficiency Payment in an amount equal to the Shortfall. For any Shortfall occurring in connection with any February 1 Payment Date, the Guarantor shall deposit such Deficiency Payment with the City on or before the January 25 preceding such Payment Date. For any Shortfall occurring in connection with any August 1 Payment Date, the Guarantor shall deposit such Deficiency Payment with the City on or before the July 25 preceding such Payment Date. All amounts transferred to the City by the Guarantor pursuant to this Section 3.2 shall be in immediately available funds in any coin or currency which at the time of payment is legal tender for the payment of public or private debts in the United States of America.

If, upon payment or provision for payment of all Debt Service on the Bonds, the City determines that any excess funds remain in the Debt Service fund (the "Surplus"), the City shall forward to the Guarantor a portion of such Surplus in an amount equal to the lesser of the total amount of Deficiency Payments made by the Guarantor to the City over the life of the Bonds or the actual amount of the Surplus.

#### ARTICLE IV

##### EVENTS OF DEFAULT AND REMEDIES

4.1) Event of Default Defined. The failure by the Guarantor to pay any of the amounts required to be paid at the times specified herein shall be an Event of Default.

4.2) Remedies on Default. Whenever any Event of Default shall have occurred, the City may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement, or covenant of the Guarantor under this Agreement.

#### ARTICLE V

##### MISCELLANEOUS

5.1) Notices. All notices, certificates, or other communications hereunder shall be sufficiently given when mailed by registered mail, postage prepaid, and addressed as follows:

To the City: Burnsville City Hall  
Attention: City Manager  
100 Civic Center Parkway  
Burnsville, MN 55337

To the Guarantor: Northern States Power Company  
414 Nicollet Mall  
Minneapolis, MN 55401  
Attention: \_\_\_\_\_

All notices, certificates, or other communication hereunder shall also be sufficiently given if addressed as provided above and hand delivered to such address. Either party hereto may, by written notice given in accordance with this Section 4.1 to the other, designate a different or additional address to which all subsequent notices, certificates, and other communications shall be sent or delivered.

5.2) Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City and the Guarantor and their respective representatives, successors, and assigns.

5.3) Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or Sections of this Agreement.

5.4) Termination. Notwithstanding anything contained herein to the contrary, upon the satisfaction in full by the Guarantor of its obligation to pay any and all Deficiency Payments when due, this Agreement shall terminate and shall thereafter be null, void and of no further force or effect.

**IN WITNESS WHEREOF**, the City and the Guarantor have caused this Agreement to be executed in their respective names on or as of the date first above written

**CITY OF BURNSVILLE**

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

Elizabeth B. Kautz, Mayor

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

Craig L. Ebeling, City Manager

Dated: \_\_\_\_\_, 2012

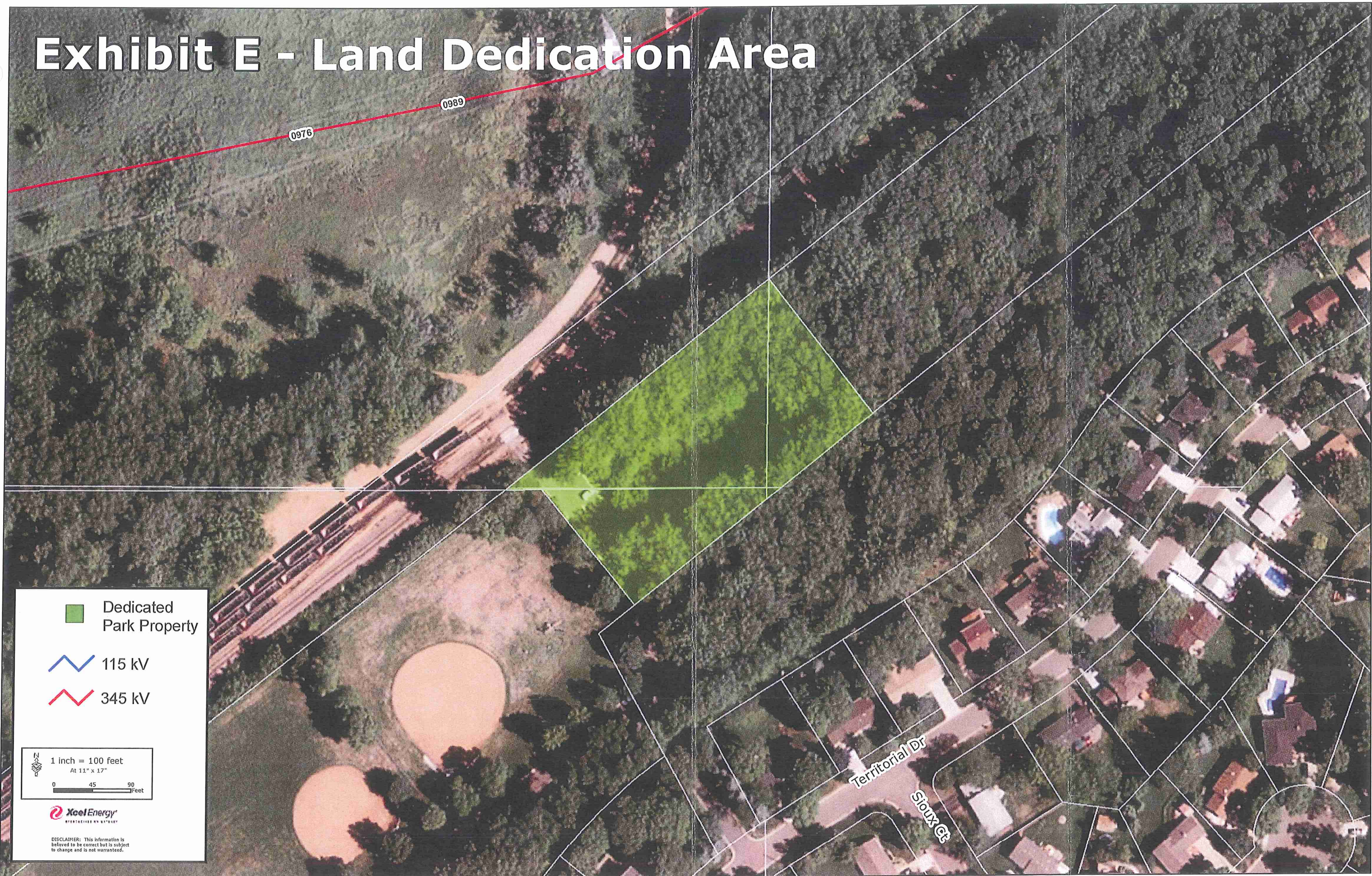
**NORTHERN STATES POWER COMPANY, d/b/a  
XCEL ENERGY**

BY: \_\_\_\_\_

Kent T. Larson

Its Vice President


# Exhibit E - Land Dedication Area



 Dedicated Park Property

 115 kV

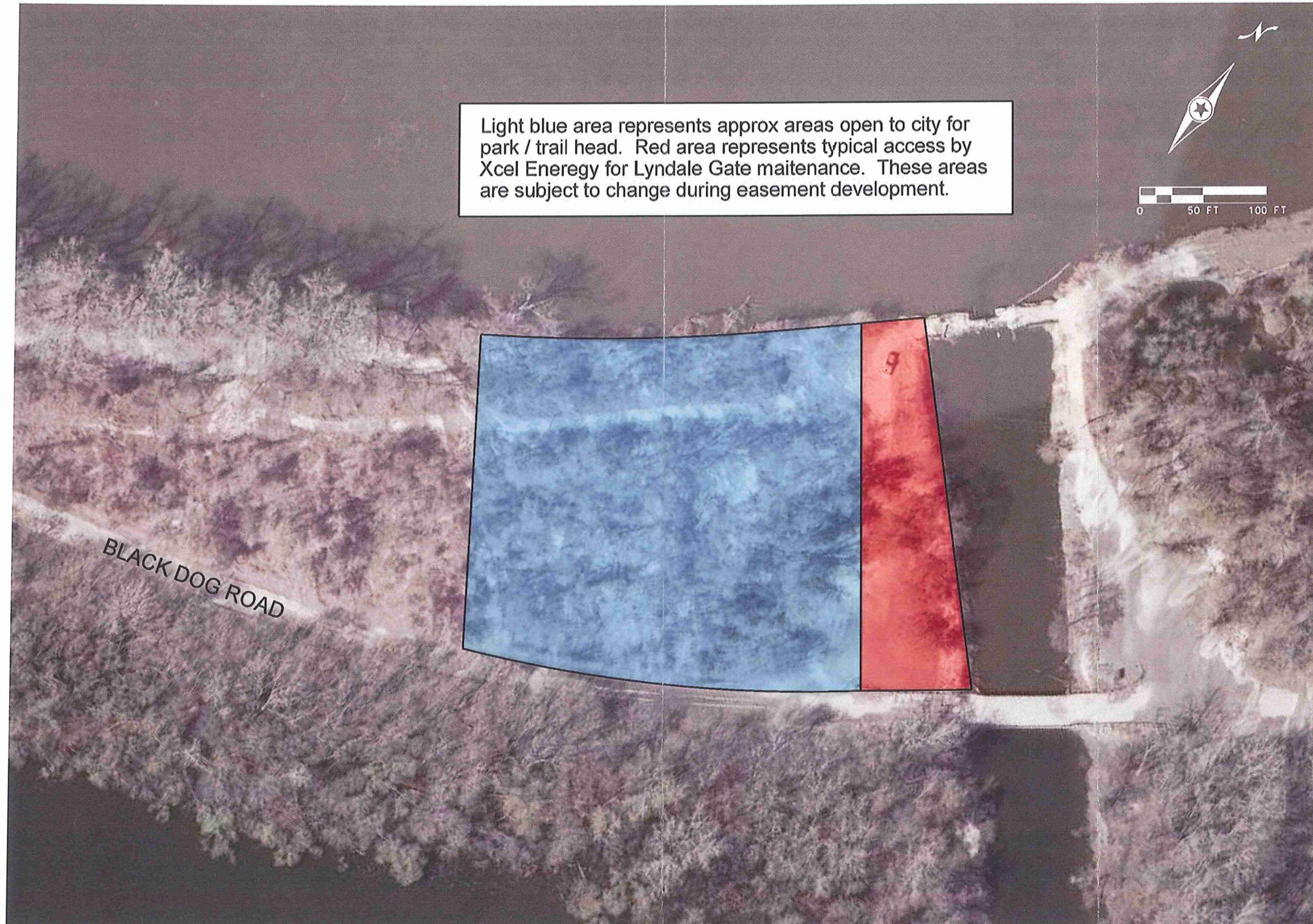
 345 kV

 1 inch = 100 feet  
At 11" x 17"  
0 45 90 Feet

 Xcel Energy  
MEMBER OF XCEL GROUP

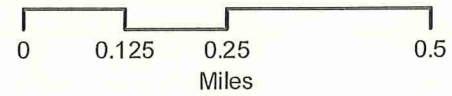
DISCLAIMER: This information is believed to be correct but is subject to change and is not warranted.

# Exhibit F - General Location for Park and Trailhead Area





# Black Dog Trail Easement Location Exhibit G



- Regional Trails (Preferred)
- Existing Trails



School



# SAFETY MOU

**MEMORANDUM OF UNDERSTANDING REGARDING PUBLIC  
SAFETY FOR THE BLACK DOG POWER PLANT**

**THIS MEMORANDUM OF UNDERSTANDING (“MOU”)**, between the **CITY OF BURNSVILLE**, a Minnesota municipal corporation (“Burnsville” or the “City”) and Northern States Power Company, a Minnesota corporation, doing business as Xcel Energy (“NSP” or “Xcel”) is effective upon approval and execution by the parties.

**WHEREAS**, Xcel owns and operates the Black Dog Power Plant (“Plant”) within the City of Burnsville, and;

**WHEREAS**, the Plant consists of various structures and facilities for the generation and transmission of electricity, shelter for employees and Plant visitors, and related activities, and;

**WHEREAS**, the Plant has and maintains security, safety and emergency management policies, and;

**WHEREAS**, Burnsville has full-time professional public safety divisions of fire, emergency medical services, police and emergency management, and;

**WHEREAS**, the City and Xcel desire to document their joint understanding regarding the City’s role in addressing public safety issues at the Plant as well as Xcel’s role in working with the City on such matters.

**ONGOING AND INCIDENT MANAGEMENT.** Xcel shall provide the City with a copy of its existing emergency response plans. Xcel agrees to work with the City on planning for responding to emergencies and shall provide the City with contact information and site maps. In addition, the City will share its incident management plans concerning Black Dog Power Plant with Xcel.

Xcel shall provide access keys to the Plant site gates for use by City police and fire personnel in the line of duty. Xcel shall identify a meeting location at the Plant site for first responders to meet the person in charge of the Plant at the time of an emergency. Xcel shall identify its representatives who are able to make critical decisions and have them respond to the command post in the event of an emergency.

To ensure emergency responders are familiar with the Plant in the event of an emergency, Xcel shall allow the City access to the Plant at least once a year for training and any time an additional hazard is identified that is not otherwise addressed in emergency response plans prepared by the City or Xcel.

**EMERGENCY RESPONSE PLAN CHANGES.** Prior to implementing any material process or site configuration changes that will alter, limit or compromise existing emergency response plans for the Plant, Xcel shall submit any required revisions to its emergency response plan to City Staff for comment and review. Xcel and the City shall work together to plan and/or identify additional emergency responses, drills, and training that will be needed to mitigate any

additional hazards. Plan updates will include periodic meetings between the City and Xcel and updated emergency response routes, if necessary.

**OTHER PLANS AND REPORTS.** The parties hereto agree that Xcel's reports to the City, as provided hereunder, are in addition to other reports and plans that Xcel is required to provide to emergency responders, including, without limitation, reports and plans required under the federal Emergency Planning and Community Right-to-Know Act.

**DISPUTE RESOLUTION.** Any disputes regarding the interpretation of this Memorandum of Understanding or arising out of activities undertaken pursuant thereto shall be resolved by the City Manager and Plant Manager for the respective parties. If they are unable to reach an agreement, either may request the matter be submitted to mediation.

**TERMINATION.** This Agreement may be modified by joint written agreement of the parties and may be terminated with or without cause, following ninety (90) days written notice by any party.

**NOTICES.** All notices, requests and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addresses:

If to Burnsville:      City of Burnsville  
                                 Craig Ebeling  
                                 City Manager  
                                 100 Civic Center Parkway  
                                 Burnsville, MN 55337

With Copy to:        Burnsville City Attorney  
                                 Campbell Knutson P.A.  
                                 317 Eagandale Office Center  
                                 1380 Corporate Center Curve  
                                 Eagan, MN 55121

If to Xcel:             Plant Director  
                                 Black Dog Plant  
                                 1400 East Black Dog Road  
                                 Burnsville, MN 55337

**WAIVER OF DEFAULT.** Any waiver by either party of a default under the provisions of this Agreement by the other party will not operate or be construed as a waiver of a subsequent default.

**INVALIDITY OF PROVISIONS.** If any term or provision of this Agreement or any application hereof to any person or circumstance is to any extent found to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable will not be effected thereby and each term and provision of this Agreement will be valid and be enforced to the fullest extent permitted by law.

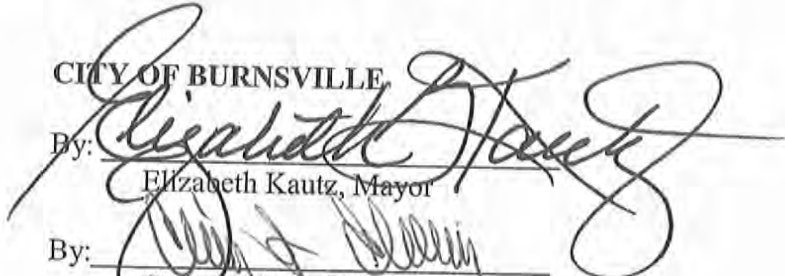
**ENTIRE AGREEMENT.** This Agreement contains the entire and only agreement between the parties on the matters addressed herein. No oral statements or representations or prior written matter not contained in this instrument will have any force and effect. This Agreement cannot be modified in any way except by writing executed by both parties.

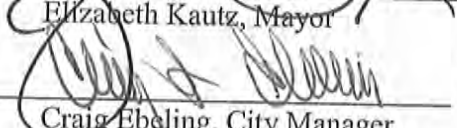
**GOVERNING LAW.** This Agreement will be governed exclusively by the provisions hereof and by the laws of the State of Minnesota, as the same from time to time exists.

**IN WITNESS WHEREOF,** the parties have hereunto set their hands as of the day and year first above written.

Dated: \_\_\_\_\_

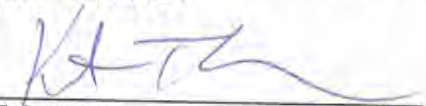
CITY OF BURNSVILLE

By:   
Elizabeth Kautz, Mayor

By:   
Craig Ebeling, City Manager

Dated: 6/11/12

**NORTHERN STATES POWER COMPANY,  
d/b/a XCEL ENERGY**

BY:   
Kent T. Larson

Its: Vice President

# BUILDING PERMIT MOU

**MEMORANDUM OF UNDERSTANDING REGARDING THE  
APPLICATION OF THE STATE BUILDING CODE AND FIRE CODE  
TO THE BLACK DOG POWER PLANT**

**THIS MEMORANDUM OF UNDERSTANDING** (“MOU”), between the City of Burnsville, a Minnesota municipal corporation (“Burnsville” or the “City”) and Northern States Power Company, a Minnesota Corporation, doing business as Xcel Energy (“NSP” or “Xcel”) is effective upon approval and execution by both parties.

**WHEREAS**, Xcel owns and operates the Black Dog Power Plant (“Plant”) within the City of Burnsville, and;

**WHEREAS**, the Plant consists of various structures and facilities for the generation and transmission of electricity, shelter for employees and Plant visitors and related activities, and;

**WHEREAS**, Burnsville has adopted and administers the State Building Code (SBC) and the State Fire Code (SFC) within the City, and;

**WHEREAS**, the City and Xcel desire to document their joint understanding regarding the City’s administration of the SBC and the SFC (collectively, the “Codes”) as to installations, construction, alterations, maintenance or repair activities at the Plant and have entered into this MOU to memorialize their understanding as to those activities at the Plant that will require permits.

**Definitions.** Terms used in this MOU shall be defined consistent with state law and rule definitions. To supplement or clarify those definitions, or to define terms not defined by state law or rule, this MOU uses the following definitions:

- **Alteration** Any construction or renovation to an existing structure other than repair or addition; synonymous with Modification.
- **Building** Any structure used or intended for supporting or sheltering any use or occupancy.
- **Construct** to make or form by combining or arranging parts or elements, that is, to build.
- **Install** to set up for use or service.
- **Maintenance** to keep in an existing state (as of repair): the upkeep of property or equipment.
- **Mechanical Systems** Mechanical systems which are permanently installed and utilized for Occupied Spaces, including the following:
  1. heating and cooling units
  2. plumbing (sanitary sewer and potable water)
  3. sprinklers
  4. natural gas supply (for appliances and unit heaters)
  5. elevators.
- **NEC** National Electric Code: A Code of rules whose purpose is the practical safeguarding of persons and property from hazards arising from the use of electricity.



- **NESC** National Electric Safety Code: A Code of rules for the practical safeguarding of persons during the installation, operation, or maintenance of electrical supply equipment.
- **Occupied Spaces** Areas, rooms, or enclosed spaces designed or used for human occupancy
- **Power Generating Equipment** Any equipment utilized for the generation of power, transmission, and distribution of electrical energy on utility side of the service point.
- **Repair** The reconstruction or renewal of any part of an existing building or mechanical system for the purpose of its maintenance.
- **Structure** That which is built or constructed.

1. **BUILDING PERMITS.** The City and NSP agree that the following activities at the Plant shall require a building permit, unless expressly excluded in this MOU:

Alterations of Buildings containing Occupied Spaces (but specifically excluding the Power Generating Equipment and enclosures within any Building).

Installation or construction of new Mechanical Systems, including the Alteration of existing Mechanical Systems.

Sewer and potable water Alterations as required in accordance with the SBC.

New construction and new installations or Alterations of Buildings and Mechanical Systems that are not exempt.

Electrical installations covered by the National Electric Code, NFPA 70, such as electrical installations on the load side of the service point, as opposed to the utility side of the service point.

Installation or Alteration of elevators and the Repair or replacement of the following:

1. Speed governors and/or governor rope
2. Releasing carrier
3. Rope fastenings and hitch plates

2. **POWER GENERATING EQUIPMENT - NOT SUBJECT TO STATE BUILDING CODE OR STATE FIRE CODE AND PERMITS.** Minnesota Statutes § 326B.36, subdivision 7(2) exempts electrical utilities from obtaining electrical permits and electrical inspection. The exemption applies to generation, transmission, and distribution of electrical energy on utility side of service point. Accordingly, the City and NSP agree that the following are not subject to the Codes and that no permits or inspections shall be required:

Work on equipment that is an integral part of Power Generating Equipment, generating plant, substation, or control center that is covered by the National Electric Safety Code (IEEE C2).

Electric generating facility Power Generating Equipment and machinery including stairs, platforms and other features integral to the generating equipment, or attached directly thereto.

Fuel gas systems utilized specifically for the production of electricity which are exempted by the International Fuel Gas Code.

### **3. REPAIRS AND MAINTENANCE.**

Customary repairs and maintenance activities do not require permits as follows:

Ordinary repairs to buildings or structures that do not include:

1. Cutting away of all or a portion of any wall or partition
2. Removal or cutting of any structural beam or load bearing support
3. Removal or change of any required means of egress from a Building
4. Rearrangement of parts of structure affecting egress requirements
5. Additions to, Alteration of, or relocation of (a) any piping such as standpipes, water supply, sewer, drainage, drain leader, gas, waste, vent or similar piping; (b) electric wiring or mechanical, or (c) other work affecting public health or general safety

Replacements of any part that does not alter approval of equipment or make the equipment unsafe.

Preventative maintenance work.

**4. OTHER PERMITS.** This MOU does not address permits related to improvements to the Plant's grounds, such as grading and earthwork permits, right-of-way permits, tree removal permits or landscaping permits.

**5 PERMITS ADMINISTRATION.** NSP may obtain an annual permit from the City for regular Modifications necessary at the Plant. NSP or its contractor will be responsible for submitting a list of the planned Plant Modifications to the City. The list of planned Modifications subject to the Codes, as provided in this MOU, may be submitted bi-annually or quarterly and the City may inspect accordingly.

**6 INTERPRETATION.** It is the intent of the City and NSP to comply with state law on Code interpretation and administration of the Codes. The parties agree to revise this MOU if necessary to conform with any subsequent amendment to the Codes. The parties agree to discuss any Work not specifically exempted from the Codes as defined herein, in an effort to determine whether such work requires a permit. The parties also agree that the terms of this MOU including any subsequent amendments shall not be applied retroactively as to any Buildings, Mechanical Systems, Alterations, Construction or similar work that has been completed at the Plant as of the date of this MOU or any amendment, as the case may be.

**7 DISPUTE RESOLUTION.** Any disputes regarding the interpretation of this MOU or arising from activities undertaken pursuant thereto shall be resolved by the City Manager and Plant

Director. If they are unable to reach an agreement, either may request that the matter be submitted for resolution through mediation.

**8 TERMINATION.** This MOU may be modified by joint written agreement of the parties and may be terminated with or without cause, following ninety (90) days written notice by any party.

**9 NOTICES.** All notices, requests and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addresses:

If to Burnsville:           City of Burnsville  
                                      Craig Ebeling  
                                      City Manager  
                                      100 Civic Center Parkway  
                                      Burnsville, MN 55337

With Copy to:             Burnsville City Attorney  
                                      Campbell Knutson, P.A.  
                                      317 Eagandale Office Center  
                                      1380 Corporate Center Curve  
                                      Eagan, MN 55121

If to Xcel:                   Plant Director  
                                      Black Dog Plant  
                                      1400 East Black Dog Road  
                                      Burnsville, MN 55337

3. **WAIVER OF DEFAULT.** Any waiver by either party of a default under the provisions of this MOU by the other party will not operate or be construed as a waiver of a subsequent default.
4. **INVALIDITY OF PROVISIONS.** If any term or provision of this MOU or any application hereof to any person or circumstance is to any extent found to be invalid or unenforceable, the remainder of this MOU or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable will not be effected thereby and each term and provision of this MOU will be valid and be enforced to the fullest extent permitted by law.
5. **ENTIRE AGREEMENT.** This instrument herein contains the entire and only agreement between the parties and no oral statements or representations or prior written matter not contained in this instrument will have any force and effect. This MOU cannot be modified in any way except by writing executed by both parties.
6. **GOVERNING LAW.** This MOU will be governed exclusively by the provisions hereof and by the laws of the State of Minnesota, as the same from time to time exists.

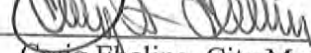
[Signatures on following page.]

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

Dated: \_\_\_\_\_, 2012


CITY OF BURNSVILLE

By:   
Elizabeth Kautz, Mayor

By:   
Craig Ebeling, City Manager

Dated: 6/1, 2012

NORTHERN STATES POWER COMPANY,  
d/b/a XCEL ENERGY

BY:   
Kent T. Larson

Its Vice President

**Attachment 3**  
**Draft Trail Easement Agreement**  
**(City of Burnsville and Xcel Energy)**

## **TRAIL AND PARK EASEMENT AGREEMENT**

THIS TRAIL AND PARK EASEMENT AGREEMENT (“Agreement”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 2014, and is by and between NORTHERN STATES POWER COMPANY, a Minnesota corporation, d/b/a Xcel Energy (“NSP” or “Grantor”) and the CITY OF BURNSVILLE, a Minnesota municipal corporation, (“Grantee”).

WHEREAS, NSP is the owner of certain real property located in the city of Burnsville, Dakota County, Minnesota, commonly known as the Black Dog Power Plant and legally described in the attached **Exhibit A** (the “Black Dog Property”).

WHEREAS, Grantee wishes to develop a public recreational trail to be known as the Black Dog Greenway. Portions of the Greenway will cross portions of the Black Dog Property.

WHEREAS, the Grantee has requested that NSP grant to the Grantee certain easements over a portion of the Black Dog Property for only park, recreational trail use and natural wildlife observation purposes only and also for vehicular parking associated therewith, all as further described herein; and NSP has agreed to grant said easements subject to all existing encumbrances of record, the long-term lease of most of the Black Dog Property to the U.S. Fish & Wildlife Service, and subject to the covenants and obligations set forth in this Agreement.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **ARTICLE 1** **EASEMENTS**

**1.01. Trail Easement Area.** Subject to the terms and conditions set forth in this Agreement, NSP hereby grants to Grantee a non-exclusive, perpetual easement in gross for recreational trail purposes over and upon the “**Trail Easement Area**” depicted in the site plan attached hereto as **Exhibit B.** The legal description of the Trail Easement Area is attached hereto as **Exhibit C.** The easement granted in this Section 1.01 gives Grantee the following rights in the Trail Easement Area: to construct, operate, maintain, repair, replace

and remove a public trail only for the recreational use by pedestrians, bicyclists, and by users of other similar non-motorized cycles and by no others.

**1.02. Park.** NSP also hereby grants and conveys to Grantee a perpetual non-exclusive easement in gross for park and trailhead uses generally consistent with the uses depicted on the site plan attached as **Exhibit D** (referenced herein as the “Park Easement Area”) and legally described in the attached **Exhibit E.**

**1.03. Easement Areas.** The Trail Easement Area and the Park Easement Area are collectively referred to herein as the “Easement Areas.”

**1.04. Access.** Access to the Easement Areas shall be solely from adjoining public road rights-of-way.

**1.05. Running of Benefits and Burdens; No Assignment.** All provisions of this Agreement, including the benefits and burdens, shall be deemed to run with title to the Black Dog Property and are binding upon the transferees, successors and assigns of the owners of the Black Dog Property. The easements granted herein are easements in gross. Grantee shall not assign, sell, delegate, subcontract or otherwise transfer or encumber in any manner whatsoever the easements granted herein or all or any portion of the Grantee’s rights, duties or obligations under this Agreement. Any such transfer or encumbrance shall be null and void and shall permit Grantor to terminate this Agreement immediately.

**1.06. Obstruction and Interference.** The Grantee may make such use of the Easement Areas granted herein so long as such use does not unreasonably interfere with Grantor’s reserved rights, as further described herein.

## **ARTICLE II** **RULES AND REQUIREMENTS**

**2.01. Grantee’s Responsibilities.** In addition to requirements set forth elsewhere in this Agreement, Grantee shall at all times enforce and observe all of the following requirements:

- (a) Grantee shall install and maintain signage on the Easement Areas to notify members of the public and other authorized users of the Easement Areas of the following: hours of operation, emergency contact information, that access to other portions of the Black Dog Property is strictly prohibited, and other items as reasonably requested by Grantor.
- (b) Grantee shall ensure the Easement Areas are kept free of rubbish, wastes, debris and are kept in a neat, safe and orderly condition.
- (c) Grantee shall neither bring onto the Black Dog Property, including the Easement Areas, nor permit to be brought onto the Black Dog Property any Hazardous Materials. The term “Hazardous Materials” includes any substance, pollutant, contaminant, chemical, material or waste that is regulated, listed or identified under any federal, state or local laws or regulations (including common law) concerning

protection or preservation of human health, the environment, or natural resources, and regardless of form or concentration or origin. In the event Grantee brings Hazardous Materials onto the Black Dog Property (with or without permission of Grantor), Grantee shall comply with all applicable laws, ordinances, and regulations of federal, state, and local governmental agencies related to such Hazardous Materials. Grantee shall remove such Hazardous Materials from the Black Dog Property upon request of Grantor. Grantee shall bear all costs related to environmental investigation, cleanup, removal, or restoration of any water, air, groundwater, natural resources, soil, or land, including, but not limited to, the Easement Areas, incurred as a result of the presence of such Hazardous Materials on the Site, or arising out of the acts or omissions of Grantee, its agents, invitees, the users of the Easement Areas, or employees.

- (d) Grantee shall not store pesticides, herbicides, or any other chemicals or biological agents or petroleum products on the Easement Areas at any time.
- (e) Grantee shall patrol the Easement Areas in a manner similar to other park and trail areas under its jurisdiction and will not allow or authorize any person to use the Easement Areas for boat launching, overnight parking, or camping.
- (f) Grantee shall identify hazardous and potentially hazardous areas on or about the Easement Areas and shall inform its employees, independent contractors, subcontractors, suppliers, invitees, representatives and members of the public so as to safeguard against any and all hazards or other safety risks.
- (g) Grantee shall provide all security it deems necessary to ensure that the Easement Areas are used only as set forth in this Agreement. Grantor shall have no liability for any injury, loss or damage arising out of Grantee's failure to properly provide such security.
- (h) Grantee shall keep and maintain the developed portions of the Easement Areas in a manner consistent with other City park and trail facilities and shall be solely responsible for collecting and disposing of all litter and refuse left in the Easement Areas.

**2.02. No Liens.** Grantee shall keep the Easement Areas free and clear of any and all liens and encumbrances arising or which might arise for any reason, out of Grantee's occupancy and use of the Easement Areas.

**2.03. Compliance with Laws, Rules, and Regulations.** At its sole cost and expense, Grantee shall give all necessary notices and shall obtain all required permits, licenses, authorizations and approvals. Grantee shall comply and ensure that all of its employees, agents, independent contractors, subcontractors, suppliers, invitees and representatives comply with all applicable federal, state and local laws, ordinances, governmental rules and regulations, including without limitation, those relating to the preservation of public health and safety, employment laws, environmental laws, all laws and regulations concerning erosion control and stormwater management, zoning ordinances, and those regulations within the Occupational Safety and Hazard Act (OSHA). Grantee shall be solely liable for payment of any fines or assessments levied thereunder against Grantee resulting from its acts or omissions hereunder.



**2.04. Grantor's Electric Power Advisory.** The Grantee agrees and understands that the Grantor may have constructed electric power generation, transmission, distribution, or related facilities on the Easement Areas. The Grantee has been fully advised by the Grantor that such electric facilities may transmit and may continue to transmit electric current at significant voltages, and that the conductors on electric lines may not be insulated. The Grantee shall advise all of its employees, licensees, agents, contractors, subcontractors, invitees, suppliers and other persons, including members of the public, who enter upon the Easement Areas of the existence and nature of such electric facilities and the potential danger and risk involved.

### **ARTICLE III** **INDEMNITY AND INSURANCE**

**3.01. Assumption of Risk:** Grantee acknowledges and is fully aware of the dangers and risks of working on or about the Black Dog Property, which is an operating power-generating facility. Grantee also acknowledges and is fully aware of the risks of construction and developing improvements on or about the Black Dog Property, which is a site that may require environmental remediation through the Minnesota Pollution Control Agency's Voluntary Investigation and Cleanup program. Grantee knowingly and willingly assumes the risk of harm (e.g., injury to or death of persons and damage to or destruction of property) that may occur to Grantee or its invitees while on and about the Easement Areas. Grantee assumes full responsibility for protecting its installations and personal property from all property conditions and from the risk of theft and vandalism. This Section 3.01 is not intended to release Grantor from any obligations it may have under applicable law to address the environmental conditions within the Easement Areas.

**3.02. Insurance.** Grantee shall extend and maintain its insurance coverage for Grantee's operations at the Easement Areas, currently in the amount of One Million and Five Hundred Thousand Dollars (\$1,500,000.00 for any number of claims arising from a single occurrence) and shall name Grantor as an additional insured, which coverage shall be evidenced by a Certificate of Insurance provided to Grantor prior to access to and occupation of the Easement Areas and annually thereafter. In the event the Minnesota Legislature amends Minnesota Statutes Chapter 466 to increase the statutory limits as set forth therein, the Grantee shall increase the insurance limits as set forth in this Section 3.02 accordingly.

**3.03. Indemnification.**

- (a) (i) As used in this Agreement, the term "Claims" means (1) losses, liabilities, and expenses of any sort, including attorneys' fees; (2) fines and penalties; (3) environmental costs, including, but not limited to, investigation, removal, remedial, and restoration costs, and consultant and other fees and expenses; and (4) any and all other costs or expenses.
  
- (ii) As used in this Agreement, the term "Injury" or "Injuries" means (1) death, personal injury, or property damage; (2) loss of profits or other economic injury; (3) disease or actual or threatened health effect; and (4) actual damages.

(b) Grantee covenants and agrees to at all times protect, indemnify, hold harmless, and defend Grantor, its directors, officers, agents, employees, successors, assigns, parents, subsidiaries, and affiliates from and against any and all Claims arising from, alleged to arise from, or related to any Injury actually occurring, as a result of or arising from, the Grantee's uses of the Easement Areas as set forth herein or related to:

(i) this Agreement; or

(ii) the Grantee's or any other person's presence at the Black Dog Property as a result of or related to this Agreement.

(c) The Grantee's duty to protect, indemnify, hold harmless, and defend hereunder shall apply to any and all Claims or Injuries arising from the Grantee's uses of the Easement Areas, including, but not limited to:

(i) Claims asserted by any person or entity, including, but not limited to, employees of the Grantee or its contractors, subcontractors, or their employees;

(ii) Claims arising from, or alleged to be arising in any way from, the existence at or near the Easement Areas of any hazardous materials, regardless of origin; or

(iii) Claims arising from, or alleged to be arising in any way from, the acts or omissions of the Grantee, its invitees, members of the public, employees, Grantees, agents, contractors, invitees and all other persons.

(d) Limitation of Indemnification Liability. Under no circumstances will Grantee be required to pay any amounts in excess of the limits on liability established by Minnesota Statutes § 466.04, as amended from time to time or any successor state statute that establishes the maximum liability of municipalities, without regard to any of the exceptions to municipal liability set forth in Minnesota Statutes § 466.03.

**3.04. Covenant Not to Sue.** Grantee, for itself and its representatives, successors, and assigns, does hereby covenant and agree not to sue or bring any action against Grantor for Injuries sustained to Grantee's person or property or the person and property of Grantee's employees, agents, independent contractors, subcontractors, invitees, suppliers, representatives, customers or members of the public due to or in any way arising from or connected directly or indirectly with Grantee's stated and associated activities and presence in and about the Easement Areas.

#### **ARTICLE IV** **CONSTRUCTION AND MAINTENANCE**

**4.01. Maintenance.** Grantee shall be solely responsible, at its sole cost and expense, to maintain both Easement Areas at all times in the condition specified in Section 2.01(h), above. Grantee's responsibilities shall include regular and customary maintenance, cleaning and sweeping, repairing, and replacing all paved surfaces within the Easement Areas. Grantee shall be solely responsible for the costs, maintenance, and repairs of all utilities it

installs at the Easement Areas, including without limitation, any electrical fixtures that may be installed in either of the Easement Areas by or at the request of the Grantee. Grantor shall have no responsibilities for any of the costs and responsibilities set forth in this Section 4.01, except for shared facilities, as described in Section 4.02 below.

**4.02. Shared Bridges and Black Dog Road.** Grantee shall perform all necessary and required road and bridge repairs and maintenance to assure that all driving surfaces remain open at all times and that the bridges will safely handle a minimum of a 10-ton per axle load. All driving surfaces must be kept free of sediments and dredge spoils. Grantee shall be solely responsible for all costs of maintaining, repairing, and replacing Black Dog Road and all bridges within the Trail Easement Area until Grantee vacates the portion of Black Dog Road running from the west side of Bridge #L5774 (Lyndale gate) to the Grantor's easterly Property line as a public right-of-way and terminates all road rights-of-way easements granted by NSP to the City for the use of the aforesaid portion of Black Dog Road. When the preceding conditions have been met, then notwithstanding the provisions of Section 4.01 of this Agreement, Grantee and Grantor shall thereafter share the costs of repairing, replacing, and maintaining any shared roadway or shared bridge in proportion to the areal surface of the roadway or bridge in question that is dedicated to the exclusive use of either Grantor or Grantee. By way of illustration only, if a shared bridge is 40 feet wide and the Trail Easement Area is 10 feet wide as it crosses that shared bridge, Grantee shall be responsible for 25% of the costs of maintaining, repairing, and replacing the shared bridge and Grantor shall be responsible for 75% of the costs of maintaining, replacing, and repairing the shared bridge. Grantor shall reimburse Grantee's actual costs incurred under this Section 4.02 within 60 days after receipt of written request for same, which shall include reasonably adequate documentation of the nature of the work performed. If the use of any bridge or roadway is no longer shared by Grantor and Grantee, then the party using the formerly shared facility shall thereafter be solely responsible for the costs of maintenance, replacements, and repairs.

**4.03. Snow Plowing.** Grantor shall only be responsible for keeping those portions of the Easement Areas it needs for its business operations free and clear of snow and ice. Grantee shall be solely responsible for the remainder at the Grantee's discretion.

**4.04. Construction; Environmental.** Prior to commencing construction or reconstruction in either Easement Area, Grantee shall provide Grantor with copies of all plans for such construction. Grantee shall not unreasonably refuse any plan modifications that Grantor might suggest. Grantor herein authorizes Grantee to utilize Black Dog Road for purposes of constructing the Park and Trail improvements. Grantee shall be solely responsible for all costs of construction, operations, and maintenance of the trail, park, and parking lot within the Easement Areas. Grantee shall not disturb, puncture, or excavate beneath any environmental cap that exists or that may be placed in an Easement Area by Grantor under any circumstance. Grantee shall respond to any hazardous or waste materials that it may encounter in the course of its construction in the Easement Areas strictly pursuant to the requirements of applicable law and shall promptly notify Grantor upon discovery of any such materials. Grantor shall have no responsibility for any third-party wastes deposited within the Easement Areas including, but not limited to, river dredge spoils.

**ARTICLE V**  
**GRANTOR'S RESERVED RIGHTS**

**5.01. Grantor's Rights.** Grantor reserves the right, at any time and from time to time, to make such use of the Easement Areas as is necessary for any business purpose, including, but not limited to, the construction, operation or maintenance of its transmission, distribution or appurtenant facilities now located or to be located on the Black Dog Property. In the exercise by Grantor of all of the foregoing rights, Grantor will use its best efforts not to materially interfere with the Grantee's rights granted by this Agreement, but Grantor shall have the right to close temporarily all or portions of the Easement Areas to the public from time to time for purposes of addressing any necessary environmental issues, construction, operations, or maintenance of the Black Dog Power Plant, or at other times when Grantor's plant operations might interfere with the public's safe use of the Easement Areas. In such case, Grantor shall be responsible for any costs of restoring any improvements constructed or installed by Grantee in the Easement Areas to existing conditions. Unless Grantor must act immediately due to a threat to human health or a threat to the environment, Grantor will provide at least one (1) week prior written notice to Grantee if it exercises the foregoing rights to close the Easement Areas. Grantor shall not in any event be liable for inconvenience, annoyance, disturbance or other damage to Grantee, by reason of Grantor's exercise of the foregoing rights or any other rights of Grantor to enter into or use the Easement Areas, and the obligations of Grantee under this Agreement shall not be affected in any manner.

**5.02. Environmental.** In addition, Grantor hereby reserves the right to establish, construct, place or maintain engineered controls (such as an environmental cap) or institutional controls within the Easement Areas, as necessary, to remediate any environmental condition. Such controls will be established with the approval of the Minnesota Pollution Control Agency and any other agency with jurisdiction over the environmental conditions of the soils, waters, and sediments at or beneath the Black Dog Property. In such case, Grantor shall notify Grantee in writing and upon notice, Grantee shall thereafter protect and not disturb all such engineered controls (including, but not limited to, an engineered barrier or cap) and shall abide with all recorded restrictions and covenants. Grantee shall consent and subordinate its interests under this Agreement to any environmental covenant or easement that Grantor may record against title to the Black Dog Property.

**5.03. Relocation.** Grantor hereby reserves the right to relocate permanently all or portions of the Easement Areas from time to time if Grantor determines, acting reasonably, that the location of all or any portion of either of the Easement Areas interferes with the Grantor's business operations; presents a health or safety hazard to members of the public using the Easement Areas; or is required by adopted legal requirements regarding the security of energy or power production facilities. Grantor shall provide Grantee with at least six months' prior notice of any such relocation and the parties shall reasonably agree on the locations of the relocated Easement Area. The parties will execute and record an amendment to this Agreement that shows and describes the relocated Easement Areas. In the case of any relocation made necessary to correct public health and safety conditions, Grantor and Grantee shall share equally any costs of restoring any improvements constructed or installed by Grantee in the Easement Areas to existing conditions. Grantor shall otherwise be responsible

for all costs of restoring any improvements constructed or installed by Grantee in the Easement Areas to existing conditions.

## **ARTICLE VI** **DEFAULT AND REMEDIES**

**6.01. Events of Default; Self Help.** If either party fails to comply with any provision herein, then the non-defaulting party may, upon thirty (30) days' prior written notice, proceed to cure the default (and shall have a license to do so) by the payment of money or performance of some other action. The foregoing right to cure shall not be exercised if within the 30-day notice period (i) the defaulting party cures the default, or (ii) if the default is curable, but cannot reasonably be cured within that time period, the defaulting party begins to cure such default within such time period and thereafter diligently pursues such action to completion. The 30-day notice period shall not be required if, using reasonable judgment, the non-defaulting party deems that an emergency exists which requires immediate attention. In the event of such an emergency, the non-defaulting party shall give whatever notice to defaulting party that is reasonable under the circumstances.

**6.02. Remedies.** In the event that a non-defaulting party exercises its self-help rights as set forth in Section 6.01, the defaulting party shall, within thirty (30) days after written demand (including providing copies of invoices reflecting costs), reimburse the non-defaulting party all reasonable and necessary costs to cure the default, together with interest thereon. All remedies are cumulative and shall be deemed to be in addition to any and all other remedies to which either party may be entitled in law or in equity. Either party shall also have the right to restrain by injunction any violation or threatened violation of any of the terms, covenants, or conditions of this Agreement, or to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. Grantor shall also have the right to terminate this Agreement by appropriate legal action if the public's continued use of all or a portion of the Easement Areas is hazardous or unsafe, or if required by adopted legal requirements regarding the security of energy or power production facilities.

**6.03. Enforcement.** Either Grantee or Grantor may enforce this Agreement by appropriate legal action. The prevailing party in any such action shall recover any reasonable costs or reasonable attorneys' fees which it incurs.

## **ARTICLE VII** **MISCELLANEOUS**

**7.01. Notices.** Any notice, consent, payment, demand, offer or communication ("Notice") required or permitted to be given by any provision of this Agreement must be in writing and shall be deemed to have been sufficiently given or served for all purposes if in writing and personally delivered, sent by registered or certified mail, postage and charges prepaid, or by Federal Express or other reputable overnight courier or delivery service, addressed as follows:

If to Grantor: Northern States Power Company  
d/b/a Xcel Energy  
414 Nicollet Mall  
Minneapolis, MN 55401  
Attention: Legal Department

With a Copy to: Northern States Power Company  
Black Dog Plant  
1400 East Black Dog Road  
Burnsville, MN 55337  
Attention: Plant Manager

If to Grantee: City of Burnsville  
100 Civic Center Parkway  
Burnsville, MN 55337  
Attention: City Manager

All notices shall be deemed duly given as of the date they are deposited in the United States mail or sent by overnight courier as hereinabove; provided, however, the time period in which a response to any such Notice must be given shall commence to run from the date of receipt by the addressee thereof as shown on the return receipt of the Notice. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice was given, shall be deemed to be receipt of the Notice as of the date of such rejection, refusal or inability to deliver.

**7.02. Governing Law.** This Agreement and the obligations of the parties hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of Minnesota.

**7.03. Real Estate Taxes.** Each party shall pay, or cause to be paid prior to delinquency all real estate taxes and assessments which may be levied, assessed or charged by any public authority against such party's parcel, the improvements thereon or any other party thereof.

**7.04. Binding Effect.** All of the limitations, covenants, conditions, easements and restrictions contained herein shall attach to and run with each parcel and shall benefit or be binding upon the successors and assigns of the respective parties. This Agreement and all the terms, covenants and conditions herein contained shall be enforceable as equitable servitude in favor of said parcels and any portion thereof.

**7.05. Estoppel Certificate.** Any party may, in connection with the financing, sale or transfer of such party's parcel, deliver written notice to the other parties requesting such party to certify in writing that to the best knowledge of the certifying party, the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe the nature and amount of the defaults. Each party receiving such request shall execute and return such certificate within twenty (20) days following the receipt thereof. The parties acknowledge that such certificate may be relied upon by the third parties designated in the request by the party requesting such certificate.

**7.06. “As Is;” Permitted Encumbrances.** The Easement Areas, including any improvements thereon, are hereby provided in their “as is, where is” condition and shall be subject to all encumbrances recorded against title to the Black Dog Property as of the date hereof. Any service to or on the Easement Areas shall be installed at the sole expense of the Grantee, including, but not limited to, permits, licenses, fees and any associated costs of “hook-up,” all of which must be approved by Grantor in advance.

**7.07. No Warranty.** Grantor makes no representation as to the suitability of the Easement Areas for the uses as set forth herein and no such representation, or any other representations, are made by Grantor or shall be implied by operation of law or otherwise. Grantor shall have no responsibility or liability, of any kind, type, nature or description on account of (a) the failure, cessation or termination of electric service to the Easement Areas; (b) inadequate or improper functioning of the equipment of Grantee; or (c) any interference, regardless of source (with the exception of interference caused by any of Grantor’s equipment that is not operating within its own specific license parameters) with signals transmitted from the equipment of Grantee, of any kind, type, nature or description, including by way of illustration but not limitation, loss or damage due to fire, water, windstorm, hail, lightning, earthquake, riot, vandalism, theft, acts of contractors, acts of agents or employees or others utilizing the Easement Areas, or for any other cause whether originating from, within or without the communications system of the Grantee. Further, Grantor shall have no liability or responsibility of any kind, nature or description for maintenance, repair, restoration or renovation of any of Grantee’s equipment or improvements within the Easement Areas except that Grantor shall be responsible for the costs of repairing any damage to Grantee’s equipment or improvements in the Easement Areas, but only to the extent such damage is caused by the Grantor’s gross negligence or willful misconduct.

**7.08. Recitals.** The recitals contained herein shall be a substantive part of this Agreement.

**7.09. Construction of Agreement.** The rule of strict construction shall not apply to the easements granted in this Agreement or to the covenants set forth herein. This Agreement shall be given a reasonable construction so that the intention of the parties to confer reasonably usable benefits and reasonably enforceable obligations are carried out.

**7.10. Partnership or Joint Venture.** Nothing in this Agreement shall be interpreted or construed as a partnership or joint venture between Grantor and Grantee concerning Grantee’s operations on the Property.

Add:

Lower MN River Watershed District Consent Form

[Signatures on following pages.]





**CITY OF BURNSVILLE**

By \_\_\_\_\_  
Elizabeth Kautz

Its: Mayor

By \_\_\_\_\_  
Heather Johnston

Its: Manager

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF DAKOTA    )

The foregoing instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2014, by Elizabeth Kautz and Heather Johnston, the Mayor and City Manager, respectively, of the City of Burnsville, a municipal corporation under the laws of Minnesota, on behalf of the corporation.

(Seal)

\_\_\_\_\_  
Signature of Notary Public

This Document Drafted By:

Fredrikson & Byron, P.A. (SDS)  
200 South Sixth Street  
Suite 4000  
Minneapolis, MN 55402

6086950\_5.DOC

**EXHIBIT A**

**BLACK DOG PROPERTY LEGAL DESCRIPTION**

The following platted land in the City of Burnsville, County of Dakota, State of Minnesota:

Lot 1, Block 1, Outlot A, and Outlot B, Plat of Wapetu Maza Ranch 2<sup>nd</sup> Addition

**EXHIBIT B**

**TRAIL EASEMENT DEPICTION**

**EXHIBIT C**

**TRAIL EASEMENT DESCRIPTION**

**EXHIBIT D**  
**PARK EASEMENT DEPICTION**

**EXHIBIT E**

**PARK EASEMENT DESCRIPTION**

The following described real property in the City of Burnsville, County of Dakota, State of Minnesota:

Outlot A, plat of Wapetu Maza Ranch 2<sup>nd</sup> Addition