

## ACCESS AND PERMIT AGREEMENT

**THIS ACCESS AND PERMIT AGREEMENT** (“**Permit**”) is entered into as of the XX day of \_\_\_\_\_, 2023 (“Effective Date”), by and between Ramsey County, a political subdivision of the State of Minnesota (“**County**” or “**Grantor**”) and the City of Saint Paul, a political subdivision of the State of Minnesota (“**City**” or “**Grantee**”) with respect to the following:

### RECITALS

- A. The County is the owner of certain real property located in the City of Saint Paul, County of Ramsey, State of Minnesota, at 50 West Kellogg Boulevard, which is legally described as set forth in **Exhibit A** and is commonly known as the Ramsey-West, or Riverfront, site (the “**Property**”);
- B. The Property consists of a sheer bluff extending from street level at Kellogg Boulevard down to street level at Shepard Road, and is enclosed at Shepard Road level by fencing on three sides extending from the bluff;
- C. The Property is accessed at Shepard Road level from the west via Ontario Street, across property owned by District Energy;
- D. The City has requested access and the right to enter onto the Property for the purpose of cleaning, replacement, and inspection of large-scale sewer pipes that extend under the Mississippi River parallel to the Wabasha Street Bridge, as further described in this Permit (the “**Project**”). The City requires access to the site to set up, traverse over, and across the Property for the purpose of placing equipment in proximity to the sewer pipes included in the Project (the “**Access Area**”). The Project and the Access Area are included in the “**Permitted Use**,” as defined in *Section 3* of this Permit;
- E. The County is willing to allow the City access to the Property for this Project, subject to the terms and conditions of this Permit, provided that all activities under the Permitted Use comply with all applicable federal, state, and local statutes, regulations, ordinances, directives, orders and standards governing same and the County’s rules, regulations, and safety standards as may be communicated to the City from time to time, and provided that the City will not enter onto any other portion of the Property not contemplated under the Permitted Use;
- F. City access to the Property from the Access Area will be confined to area depicted as “Temporary Construction Area” on **Exhibit B** (the “**Permitted Area**”); and
- G. County use of the Property, including the Permitted Area, will be in common with County access and use; the Permitted Use must not interfere with County access and use;

**NOW, THEREFORE**, in consideration of the Recitals and other covenants set forth in this Permit, and for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is now acknowledged, the parties now agree as follows:

## PERMIT

1. **Grant of Permit.** The County grants to the City, and to its duly authorized employees, representatives, contractors, subcontractors, and agents assigned to and working on this Project (collectively, the “**Representatives**”), a permit and permission to enter upon and complete work on the Property, for the sole purpose of undertaking and completing the Permitted Use, and for the purpose of obtaining access to the Permitted Area. The City may have access to the Property from 7:00 a.m. through 5:00 p.m. each day, five days per week, Monday through Friday. The County will reasonably cooperate with the City and its Representatives to provide such assistance as may be reasonably requested by the City or its Representatives with respect to the performance of the Permitted Use, provided that such assistance will be without material cost to County.

2. **Admission of No Right.** The City agrees that the Permitted Area as shown on **Exhibit B** is correct. The City does not now, nor will it in the future, claim any right or title to the Property, or any part of the Property, by reason of past, present, or future occupancy of the Property.

3. **Permitted Use.** The County and the City agree that the City and/or its Representatives may use and temporarily occupy the Permitted Area for the sole purpose of completing the Project, for which the City will bring personnel, trucks, and other specialized equipment through the Access Area onto the Property. The County understands that the Project could cause certain vibrations, noise, and produce odors consistent with a sewer pipe that may occur during the project on the Property, or on neighboring properties. The City or its Representatives must take all reasonable measures to minimize such vibrations, noise, and odors to the extent possible.

4. **Term.** The City’s right of entry and access to the Property will be for **one year**, commencing on October 1, 2023 (the “**Commencement Date**”), and the Permitted Use must be completed by September 30, 2024 (the “**Work Termination Date**”). On or before the Work Termination Date, the City and the City’s Representatives must have all equipment removed from the Property. The City’s right of entry and access to the Property to restore the Property to its condition prior to the Commencement Date will terminate on October 1, 2024 (the “**Restoration Termination Date**”).

### 5. **Responsibilities of the City.**

- a. The City must only permit its Representatives to enter upon or use the Property during the term of this Permit, unless the County’s prior written consent is obtained.
- b. The City must not disturb the Property or the County’s operations at the Property. The Permitted Use may be performed during regular business hours, unless the County’s prior written consent is obtained. If the City desires that the Permitted Use be conducted at times other than the normal business hours, the City will be responsible for any additional cost associated with said request, including without limitation, any additional security services required for the Property by the County.

- c. As soon as practicable after the Effective Date, and prior to entering the Property for the first time, the City must provide an updated Project description, including a written Project timeline. Such Project timeline must include the dates on which the City or any of its Representatives will be in the Permitted Area. Such Project timeline must also be updated if any changes occur throughout the Term of this Permit. For purposes of this paragraph, an email with the updated Project description and the Project timeline from the City to Jean Krueger, Director of Property Management, at [jean.krueger@co.ramsey.mn.us](mailto:jean.krueger@co.ramsey.mn.us) will be sufficient written notice. The City will not be provided with the access code for the keypad at the entrance of the Property until the Project timeline is provided.
- d. The City will work with the County's Property Management staff to coordinate initial access to the Property, and will secure the Property when it is not in use by City.
- e. The City will not interfere, or create obstacles, for others permitted to the area.
- f. The City will work together with other permittee's access to the area and coordinate a joint effort for all parties to work harmoniously.
- g. The City must, at its expense, obtain and comply with the terms of all regulatory permits, approvals, permits, and registrations, and give any required notices to any party, including any necessary permits required. The City must also notify neighboring properties of the possibility of vibrations, noise, and smell onto such neighboring properties.
- h. The City will be solely responsible for the off-site disposal of any samples or materials taken or associated waste.
- i. The City and/or its Representatives must keep the Property in a safe, clean, sightly, and proper condition during the term of this Permit.
- j. The City and/or its Representatives are responsible for securing their equipment on the Property at all times while it engages in the Permitted Use.
- k. The City must, in a timely manner, notify the County of any legally reportable spill or safety incident or failure to comply with applicable legal requirements by the City or the City's Representatives on the Property.
- l. In exercising any right or privilege in this Permit that results in any change in the surface to any part of the Property, the City must replace and/or repair any concrete, pavement, landscaping, fencing, locks, or other property of the County that is damaged or destroyed, including removal of fallen rock from the bluff, as a result of the Project, City's actions, or the actions of the City's Representatives.
- m. All activities permitted by this Permit must be performed by the City, or the City's Representatives, in a good and workmanlike manner, in accordance with good engineering practice, with the least possible inconvenience to the County and the Property, and pursuant to all governmental laws, regulations and ordinances relating to them, including laws relating to worker safety and to proper disposal of any samples or materials taken from the Property as well as County's rules, regulations and safety standards.

- n. The City will immediately notify the County of any adverse environmental conditions encountered during the performance of the Permitted Use and will cease all activities on the Property until further notice from the County.
- o. The City will be responsible for repairing any damage to the Permitted Area (e.g., vandalism, graffiti) that occurs during the City's use of the Property as a result of the negligence of the City or its Representatives.

**6. Liens.** The City will not suffer or permit to be enforced against the Property any mechanic's, materialmen's, contractor's or subcontractor's liens or any claims for damages arising from the Permitted Use of the Property. If any mechanic's lien is filed against the Property as a result of work and/or services performed by or on behalf of, and/or as a result of materials furnished for the use of, the City, then the City agrees to cause such lien to be discharged prior to entry of final judgment (after all appeals) for the foreclosure of such lien and further agrees to indemnify, defend, and hold harmless the County and the Property against liabilities, losses, damages, costs or expenses (including reasonable attorneys' fees and costs of suit) on account of such claim of lien. Upon request of the County, the City agrees to promptly cause such lien to be released and discharged of record, either by paying the indebtedness, which gave rise to such lien, or by posting a bond or other security as will be required by law to obtain such release and discharge. The foregoing will not be deemed to prevent the City from contesting the validity of any lien in any manner the City chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), the City will promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien.

**7. County Not Liable.** The City and its Representatives understand and agree that they will enter upon the Property at their own risk. The City will have no duty to inspect the Property to which this Permit applies and will have no duty to warn any person of any latent or patent defect, condition or risk that may exist on the Property or that might be incurred in the exercise of the rights granted in this Permit. The City will have no responsibility or liability for any damage to any property or equipment of the City or its Representatives which is used by the City or its Representatives or is placed on the Property by the City or its Representatives. The City will have no responsibility for any damage that is the result of vibrations or other activities related to the Project or the Permitted Use, which might occur on the Property, or on any adjacent property owned by other parties.

**8. Assignment.** The City may not transfer, assign, or sublet its interest in this Permit, whether voluntarily or by operation of law, and the City will not permit the use of the Property, or any part of the Property, except in strict compliance with the provisions in this Permit.

**9. Insurance.** The City, by acceptance of this Permit, agrees to maintain and to require its Representatives performing any work permitted and/or required below to maintain the following insurance:

- a. worker's compensation insurance, in accordance with the laws of the State of Minnesota;

- b. commercial general liability insurance (including, but not limited to, contractual liability coverage) covering claims for bodily injury and property damage occurring on, in or about the Property, no less than provided in Minnesota Statutes, Chapter 466; and
- c. automobile liability insurance including all owned, non-owned or hired vehicles with limits no less than provided in Minnesota Statutes, Chapter 466.

Such insurance will name the County, its officials, employees, agents, and any successors, heirs or assigns of the County, as an additional insured (with respect to the commercial general liability insurance), will be primary and non-contributory with any insurance or self-insurance of the County, or any successors, heirs or assigns of County, and include a waiver of subrogation. The City agrees to and will require its Representatives to provide such certificates of insurance to the County prior to any entry upon the Property.

**10. Indemnity.** To the fullest extent permitted by law, the City will defend, indemnify, and save harmless the County, its elected officials, officers, agents, and employees from any loss claim liability or other accident-related exposure beyond the payment of insurance premiums, self-insured retention or deductible, or self-insurance program, caused by the negligent acts or omissions of the City’s appointed officials, officers, agents, or employees, and arising out of the Permitted Use or Crossing Access.

**11. No Waiver of Immunities.** Neither the County nor the City waives any immunities, or defenses on liability to the parties at law or in equity, and the parties expressly agree that the terms of this Permit will not be construed to create any such waiver.

**12. As Is Where Is.** The City has inspected the Permitted Area on \_\_\_\_\_ (the “**Inspection Date**”), and finds that it is suitable for its purposes in the condition as of the Inspection Date. The County makes no promises or warranties of any kind whatsoever regarding the title or condition of the Property. The County makes no promises or warranties of any kind whatsoever regarding the suitability of the Property for the City’s purposes. In connection with this Permit and the rights and obligations granted by it, the County will not be obligated to undertake any improvements or make any repairs to the Property, nor will this Permit be interpreted to cause the County to have any obligation to the City whatsoever for the care or condition of the Property during the term of this Permit.

**13. Notices.** All notices provided for or desired to be sent by the parties will be in writing and will be treated as fully given when deposited in the United States mail via prepaid certified mail, or by prepaid overnight mail delivery service providing written evidence of delivery, and addressed as follows:

<p><i>If to the County:</i></p> <p>Jean Krueger, Director          Ramsey County Property Management          121 – 7<sup>th</sup> Place East, Suite 2200          Saint Paul, MN 55101</p>	<p><i>If to the City:</i></p> <p>Need contact person</p>
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**14. Entire Agreement.** This Permit constitutes the entire agreement between the parties regarding the subject matter in this Permit. No supplements, modifications, or amendments of this Permit will be binding unless in writing, executed by the parties to this Permit.

**15. Severability.** If any provision or term of this Permit for any reason is declared invalid, illegal or unenforceable, such decision will not affect the validity of any remaining provisions, provided that: (i) each party receives the substantial benefit of its bargain with respect to the transaction completed hereby; and (ii) the ineffectiveness of such provision would not result in such a material change as to cause completion of the transactions contemplated hereby to be unreasonable for either party. The remaining provisions will remain in full force and effect as if this Permit had been executed with the invalid portion thereof eliminated and it is hereby declared the intention of the parties that they would have executed the remaining portions of this Permit without including any such part or portion which may be hereafter declared invalid.

**16. Relationship of the Parties.** The County and the City are not jointly exercising powers, nor are they participating in a cooperative activity, joint venture, or joint enterprise within the meaning of Minnesota Statutes § 471.59, subd. 1a. Nothing contained in this Permit will be deemed or construed to create a partnership, joint venture, joint enterprise, or other fiduciary relationship between the County and the City as related to the Property, other than Permitter and Permittee. Neither party is authorized to act as an agent or on behalf of the other party.

**17. Governing Law and Venue.** The County and the City agree that the laws of the State of Minnesota will govern all questions and interpretations concerning the validity and construction of this Permit, and the legal relations between the County and the City, and performance under it without regard to the principles of conflicts of law. The language of this Permit is and will be deemed the result of negotiation among the parties and their respective legal counsel and will not be strictly construed for or against any party. Each party agrees that any action arising out of or in connection with this Permit will be brought solely in the courts of the State of Minnesota, Second Judicial District, or the United States District Court for the District of Minnesota.

**18. No Waiver.** No waiver by the County of any of the provisions of this Permit will be deemed a waiver of any other provisions, whether or not similar, nor will any waiver by the County be a continuing waiver. No waiver by the County will be binding unless executed in writing by the County.

**19. Signatures/Execution.** Each person executing this Permit on behalf of a party to the Permit represents and warrants that such person is duly and validly authorized to do so on behalf of such party, with full right and authority to execute this Permit and to bind such party with respect to all of its obligations included in this Permit. This Permit may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute but one and the same instrument. The parties agree that the electronic signature of a party to this Permit will be as valid as an original signature of such party and will be effective to

bind such party to this Permit. The parties further agree that any document containing, or to which there is affixed, an electronic signature will be deemed (i) to be “written” or “in writing,” (ii) to have been signed, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes of this Permit, “electronic signature” also means a manually signed original signature that is transmitted by any electronic means, including without limitation a facsimile version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party’s failure to produce the original signature of any electronically transmitted signature will not affect the enforceability of this Permit.

**20. Headings.** The section headings of this Permit are for reference purposes only and will not otherwise affect the meaning, construction, or interpretation of any provision of this Permit.

**21. Incorporation of Recitals and Exhibits.** The Recitals made at the beginning of this Permit, and the Exhibits that are attached to this Permit, are true and correct and, by this reference, are incorporated into and made a part of this Permit.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Permit through their duly authorized officers and representative on the day and year first written above.

<p><b>RAMSEY COUNTY</b></p> <p>By: _____ Jean R. Krueger, Director Ramsey County Property Management</p> <p><i>Approved as to form:</i></p> <p>_____ Assistant Ramsey County Attorney</p>	<p><b>CITY OF SAINT PAUL</b></p> <p>By: _____ Need contact person</p>
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## EXHIBIT A

### PROPERTY LEGAL DESCRIPTION

Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 20, Rice and Irvine's Addition, And  
Those parts of the following described properties:

Lots 1, 2 and 3, Block 43, said Rice and Irvine's Addition, And

Lots 1, 2, 3, 4, 5, and 6, Auditors Subdivision No. 25, And

Spring Street, Water Street, Market Street and Wabasha Street as shown in said Rice and Irvine's Addition, said Auditors Subdivision No. 25, and in City of St. Paul, And

The westerly half of St. Peter Street as shown in said plat of Rice and Irvine's Addition, And

That part of the easterly one-half of St. Peter Street adjoining Block 35, City of St. Paul, according to the recorded plat thereof, Ramsey County, Minnesota, lying southerly of a line described as commencing at the intersection of the center lines of said St. Peter Street and Kellogg Boulevard, (formerly Third Street and Old Third Street) as originally platted; thence southerly, along said center line of St. Peter Street, a distance of 69.13 feet to the beginning of the line to be described; thence easterly deflecting to the left 65 degrees 06 minutes (on the Southerly face of footing for columns as shown on City of St. Paul's Third Street Improvement Plans, dated June 28, Drawer 93, on file in the Department of Public Works) a distance of 33.11 feet to the easterly line of said St. Peter Street and said line there terminating, And

That part of the Southwest Quarter of the Northeast Quarter of Section 6, Township 28, Range 22, lying easterly of said St. Peter Street and southerly of said Auditor's Subdivision No. 25,

Described as:

Beginning at the northwest corner of said Lot 8; thence North 80 degrees 09 minutes 48 seconds East, assumed bearing, along the northwesterly line of said Block 20 and its northeasterly extension, a distance of 507.78 feet to said center line of St. Peter Street; thence South 34 degrees 57 minutes 06 seconds East, along said center line of St. Peter Street, a distance of 24.51 feet to a point distant 69.13 feet southeasterly of the intersection of said center lines of St. Peter Street and Kellogg Boulevard; thence North 80 degrees 04 minutes 01 second East a distance of 342.71 feet; thence South 56 degrees 53 minutes 04 seconds East a distance of 11.31 feet; thence South 11 degrees 52 minutes 59 seconds East a distance of 70.23 feet; thence North 68 degrees 21 minutes 56 seconds East a distance of 30.81 feet; thence South 26 degrees 54 minutes 06 seconds East a distance of 8.23 feet; thence South 70 degrees 26 minutes 54 seconds West a distance of 327.86 feet to a point on said center line of St. Peter Street distant 172.73 feet southeasterly of its intersection with said northeasterly extension of the northwesterly line of Block 20; thence South 70 degrees 46 minutes 39 seconds West a distance of 286.38 feet; thence South 69 degrees 32 minutes 52 seconds West a distance of 322.45 feet; thence South 65 degrees 54 minutes 17 seconds West a distance of 21.56 feet to the northeasterly line of Block 44, said Rice and Irvine's Addition to Saint Paul; thence North 39 degrees 16 minutes 51 seconds West, along said northeasterly line of Block 44, a distance of 23.30 feet to a line hereinafter referred to as "Line C", being 50.00 feet northwesterly of and parallel with the centerline described in Book 240 of Deeds, page 193, Document No. 86540; thence northeasterly, along said "Line C", 53.07 feet to its intersection with the southerly extension of the westerly line of said Lot 8; thence North 9 degrees 57 minutes 53 seconds West, along said westerly line of Lot 8 and its southerly extension, a distance of 91.78 feet to a point 141.96 feet southerly of said northwest corner of Lot 8; thence South 80 degrees 02 minutes 07 seconds West 11.25 feet; thence North 9 degrees 57 minutes 53 seconds West 20.98 feet; thence South 80 degrees 02 minutes 07 seconds West 24.00 feet; thence North 9 degrees 57 minutes 53 seconds West 62.09 feet; thence North 80 degrees 02 minutes 07 seconds East 4.40 feet; thence North 9 degrees 57 minutes 53 seconds West 36.87 feet to a line drawn from the northeast corner of Lot 1, Block 21, said Rice and Irvine's Addition, to a point on said westerly line of Lot 8 distant 11.20 feet southerly of said northwest corner of Lot 8; thence North 60 degrees 42 minutes 13 seconds East, along the last described line, 32.69 feet to said point on the westerly line of Lot 8 distant 11.20 feet southerly of the northwest corner

of Lot 8; thence North 9 degrees 57 minutes 53 seconds West, along said westerly line of Lot 8, a distance of 11.20 feet to the point of beginning.

AND

Those parts of Lots 1, 2, 3, 4, 8 and 9, Block 44, Rice and Irvine's Addition and Ontario Street adjoining said Lot 4 lying northerly of "Line A", easterly of "Line B" and southerly of said "Line C". Said "Line A" and "Line B" are described as follows:

"Line A" is described as commencing at the most easterly corner of Block 43, said Rice and Irvine's Addition; thence southwesterly, along the southeasterly line of said Block 43, a distance of 33.91 feet; thence southwesterly deflecting right 22 degrees 25 minutes 47 seconds 322.45 feet to the point of beginning of "Line A" to be described; thence southwesterly deflecting left 3 degrees 38 minutes 35 seconds 65.40 feet; thence southwesterly 284.73 feet along a tangential curve concave to the southeast having a radius of 2435.86 feet and a central angle of 6 degrees 41 minutes 50 seconds to said "Line B" and said "Line A" there terminating.

"Line B" is described as commencing at the northwest corner of the easterly 25.00 feet of Lot 5, Block 21, said Rice and Irvine's Addition; thence southwesterly, along the northerly line of said Block 21, a distance of 131.59 feet to the point of beginning of "Line B" to be described; thence southeasterly deflecting to the left 104 degrees 53 minutes 10 seconds a distance of 350.00 feet and said "Line B" there terminating.

# **EXHIBIT B**

## Depiction of the Permitted Area

